

NATIONAL COMPETITION POLICY REVIEW
 FAIR TRADING ACT 1989 & FAIR TRADING REGULATION 2001
 PUBLIC BENEFIT TEST REPORT
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EXECUTIVE SUMMARY

Background

This Public Benefit Test (“PBT”) report contains the findings of the PBT conducted on the *Fair Trading Act 1989* (“the Act”) and the *Fair Trading Regulation 2001* (“the Regulation”), in line with National Competition Policy (“NCP”) guidelines.

The Act and the Regulation were introduced with the objective of ensuring a fair, equitable, competitive and safe marketplace. To achieve this, the Act prohibits a number of unfair and misleading trading practices, such as mock auctions the use of obscene material to encourage the purchase of unsolicited goods. The Act regulates a number of other trading practices, such as door-to-door trading, while the Regulation prescribes Information and Safety Standards for goods and services and the Act empowers the Minister to prohibit the sale of unsafe goods. The Act also restricts some remedies to apply only to a consumer as defined by the Act.

The key stakeholders to the Act and the Regulation are consumers, industry, including retailers, suppliers, importers, door-to-door dealers and their salespeople and manufacturers, and government as regulator. Stakeholders have been extensively consulted during the review. An Issues Paper was released in late 2001. Submissions to the Issues Paper were collated and a draft consultation PBT report was prepared and released for a second round of consultation in May 2002.

All States and Territories have either completed, or are currently conducting, NCP reviews of their Fair Trading or Consumer Affairs Acts. Of those reviews that are complete, it was found that the restrictions in those Acts were in the public benefit and should be retained. Fair Trading Acts are substantially similar in all States and Territories.

Restrictions

A number of restrictions on competition in the Act and the Regulation have been identified. They are:

- The prohibition on the conduct of mock auctions;
- The prohibition on the use of obscene material to encourage the purchase of unsolicited goods;
- The regulation of door-to-door trading, including setting a prescribed amount for door-to-door contracts, cooling-off period, prohibition on accepting money or supplying services during the cooling-off period, identification requirements, restricted trading hours, and door-to-door exemptions, including the ability for dealers to apply for an exemption, and certain exempt contracts;
- The requirement for a trader to adhere to a prescribed Information or Safety Standard; and
- The ability of the Minister to restrict or prohibit the sale of unsafe goods and services.

Assessment

Mock Auctions

A mock auction occurs if goods are sold for less than the highest bid, given or offered as gifts, or if bidders can only bid if they agree to purchase other lots. Mock auctions have the potential to mislead and defraud consumers. The regulatory alternative of deregulation was considered. It was found that prohibiting mock auctions has practically removed them from existence, but if the mock auctions prohibition was to be lifted, it is possible mock auctions could start up again and it is unlikely that other legislation could protect consumers as effectively as the prohibition does. Deregulation is also contrary to the Act’s objectives. Therefore, it is recommended that the mock auction prohibition be retained.

Obscene material

The Act prohibits a trader using obscene material as a marketing or promotional tool in connection with unsolicited offers to consumers, in an effort to both protect consumers from offensive or harmful images and prevent consumers from being misled about the nature of the product. The regulatory alternative of deregulation was considered. It was found that in the event of deregulation, other legislation would be unlikely to specifically regulate this trading practice. Moreover, removal of the prohibition would not effectively protect consumers from the potential offence and ill-effects caused by obscene material, and would be contrary to the objectives of the Act. Therefore, it is recommended that the prohibition on obscene material in relation to unsolicited goods be retained.

Door-to-door trading

Door-to-door trading occurs when a door-to-door dealer arrives unannounced and uninvited to a consumer's residence for the purposes of selling goods and services. Regulation aims to protect consumers from this surprise approach, giving them time to comparison-shop and reconsider contracts, particularly if high-pressure sales tactics were involved in the making of the contract. The alternatives of deregulation, and voluntary and mandatory codes of conduct, were considered. It was found that deregulation is contrary to the objectives of the Act as it does not address the specific nature of door-to-door trading, which places consumers in a vulnerable position in the bargaining process and does not give them time to comparison-shop. A voluntary code would be unlikely to capture all the diverse industry participants in the market, and a mandatory code is costly to develop and implement but achieves the same results as legislation would. Accordingly, it is recommended that door-to-door trading continue to be regulated through the Act.

The prescribed amount is the monetary amount (currently \$50) which, if exceeded, means a contract will be subject to door-to-door provisions of the Act. The prescribed amount means that dealers in small-value goods can effectively avoid compliance with the Act. The alternatives of deregulation and modification of the amount were considered. It was found that the prescribed amount effectively benefited small business by creating an exemption, and deregulation may remove such a benefit. Accordingly it was recommended that the prescribed amount provision be retained but that the actual amount should be increased to \$75, as this was considered to be a figure that more accurately reflected the price of goods and services in the marketplace than the \$50 amount.

A ten-day cooling-off period is prescribed for door-to-door contracts. During the ten days, consumers can comparison shop and if necessary, rescind the contract without penalty. The cooling-off period provides a simple avenue to redress for consumers. The alternatives of deregulation, and a reduction of the ten-day cooling-off period to five days, were considered. It was found that deregulation does not provide consumers with a way to reconsider purchases made in haste or under duress, nor an opportunity for comparison shopping, and could lead to more consumers being subject to high-pressure sales tactics. This is inconsistent with the objectives of the Act to have an informed and equitable marketplace, and as a result deregulation is not recommended. In considering a five-day cooling-off period, it was found that five days may not be enough time for consumer to rescind a contract, particularly if consumers are in isolated areas or need to seek legal advice during the cooling-off period. It was also found that the surprise nature of door-to-door approaches meant that consumers needed a longer rather than shorter period in which to comparison shop and reconsider their purchase. It is therefore recommended that the ten-day cooling-off period be retained, as this would be more effective in meeting the objectives of the Act and Government Priority Outcomes than a five-day cooling-off period would.

During the cooling-off period, dealers are prohibited from accepting payment and providing goods or services. This protects consumers from having dealers abscond with money without providing the service but adds a cost to dealers' business. The alternative of deregulation was considered. It was found that in a deregulated situation, unscrupulous dealers could take payment from consumers and abscond without providing goods or services. This is inconsistent with the objectives of the Act and with Government

Priority Outcomes. Additionally, if consumers take delivery of goods but then rescind their contract, the dealer incurs costs in retrieving the goods and may have difficulty in reselling the goods. As such it is recommended that the restriction on payment and supply during cooling-off be retained.

Door-to-door dealers are restricted to trading hours of 9am to 6pm on weekdays, 9am to 5pm on Saturdays, and not at all on Sundays and public holidays. These restricted hours protect consumers' privacy and address the safety concerns of elderly consumers and consumers living alone but restrict dealers' ability to reach a wider audience. The alternatives of deregulation and an increase of the weekday trading hour limit to 8pm were considered. It was found that deregulation meant the potential for increased intrusion onto consumers' personal and family time, and increased safety risks for the elderly and consumers living alone, as well as the safety of salespersons doorknocking at night. As such, deregulation does not meet the objectives of the Act nor does it meet Government Priority Outcomes. In the modification alternative, it was found that increasing the trading hour limit to 8pm on weekdays would intrude upon key family time in which meals are being prepared and other household tasks are occurring. There are also safety concerns for both consumers and salespeople in these extra hours. It was found that both these outcomes are contrary to the Act's objectives and the Government Priority Outcome of safer communities, and as such it is recommended that the current trading hour limits for door-to-door trading be retained.

The requirement for dealers to produce identification and state the purpose of their call enables consumers to know who they are dealing with but places an administrative burden on dealers. The alternative of deregulation was considered. It was found that deregulation would make it more difficult for consumers to identify someone who calls upon them purporting to be a dealer, a necessity if a consumer needs to contact the dealer for refunds or repairs. In addition deregulation would have the potential for consumers to be misled by dealers about the reason for their call. Both outcomes are contrary to the Act's objectives and it is recommended that the requirement for dealers to produce identification and state the purpose of their call be retained.

Two types of door-to-door exemptions were considered. The first is where a dealer can apply to be exempt from any or all door-to-door provisions, which can benefit those dealers who can meet exemption criteria but disadvantages those dealers who cannot. The alternative of repeal of this exemption provision was considered. It was found that repeal would deny dealers a chance to avoid compliance costs and thus improve their competitiveness, especially for those dealers who already have an exemption granted. This is inconsistent with the objectives of the Act. Additionally, this exemption does not disadvantage consumers, as the Act states that their interests must be safeguarded before an exemption is granted. As such it is recommended that the ability for dealers to apply for an exemption from door-to-door provisions be retained.

The second exemption provision exempts contracts for emergency repairs as a result of natural disasters from door-to-door requirements. This exemption ensures emergency repairs are not delayed at a time when they are most needed, but consumers in such situations miss out on the protection provided by door-to-door provisions. The alternative of subjecting emergency repair contracts to some door-to-door provisions was considered. It was found that the immediate nature of emergency repairs meant that a cooling-off period and restricted trading hours should not apply to emergency repair contracts. However, it was found that door-to-door provisions requiring dealers to give consumers contracts, produce identification, and not engage in harassment and coercion should apply to emergency repair contracts which meet general requirements of door-to-door contracts. Such provisions are not onerous for dealers, will not delay emergency repairs and will provide consumer benefits consistent with the objectives of the Act and with Government Priority Outcomes. As such it is recommended that contracts for emergency repairs that meet the general requirements for door-to-door contracts be subject to the door-to-door provisions relating to prescribed contracts, production of identification, and anti-harassment and coercion.

Information standards

The Information Standards provisions require that consumers be informed about the nature and performance of goods and services. This enables consumers to make informed purchasing decisions but may impose compliance costs on business. The alternative of deregulation was considered. It was found that without Information Standards, consumers would not be informed about the nature of a product or service and could therefore not make informed purchasing decisions. This is inconsistent with the objectives of the Act to achieve an informed marketplace. It is therefore recommended that the Information Standards provisions be retained.

Safety Standards

The Safety Standards provisions require that consumers be advised about the potential physical and psychological safety hazards of a product or service. This safeguards consumers from injury or death caused by an unsafe product, but may impose compliance costs on business. The alternatives of deregulation and a voluntary code of conduct were considered. It was found that deregulation would not ensure that goods and services were safe, and that this was inconsistent with the objectives of the Act and with Government Priority Outcomes. It was also found that a voluntary code of conduct would be unlikely to be adhered to by all the diverse participants in the industry, meaning consumer safety could not be safeguarded as effectively as the Safety Standards would and that the objectives of the Act would not be met. It is therefore recommended that the Safety Standards provisions be retained.

Ministerial Prohibition

The Ministerial Prohibition provision empowers the Minister to prohibit or restrict the sale of unsafe goods and services. This safeguards consumers from injury or death but can negatively impact on the trade of a business. The alternative of deregulation was considered. It was found that deregulation would not ensure that unsafe products would be removed from the marketplace, which is inconsistent with the objectives of the Act and with Government Priority Outcomes. It is therefore recommended that the Ministerial Prohibition provision be retained.

Specific Standards prescribed by the Regulation

A number of Information and Safety Standards prescribed by the Regulation are specific to Queensland but are not adopted in other jurisdictions, and as such are considered as restrictions. These Standards are Safety Standards for folding laundry trolleys and projectile toys, and Information Standards for leather goods, shoes, furniture, and fibre content of textiles. The alternative of deregulation was considered for each of these Standards. It was found that the Information Standards for leather goods, shoes, furniture and fibre content each disclosed essential information about the nature of the products that consumers would otherwise not know, and that deregulation would not ensure this level of disclosure. It was further found that this could then lead to an uninformed marketplace, inconsistent with the objectives of the Act. It is therefore recommended that the Information Standards for leather goods, shoes, furniture and fibre content of textiles be retained.

The Safety Standards for projectile toys and folding laundry trolleys were found to proactively prevent the risk of serious injury or death being caused by these products, whereas deregulation would remove that proactive benefit and potentially lead to increased injuries or death as a result of using these products. This is inconsistent with the safety objectives of the Act and with the Government Priority Outcome of safer communities. It is therefore recommended that the Safety Standards for folding laundry trolleys and projectile toys both be retained.

Other Issues

Stakeholders raised a number of issues that did not come within the terms of reference for this review. These issues include the role of telemarketing and finance brokers in door-to-door trading, the use of the word “visit” instead of “call” in door-to-door provisions, a proposal that some goods, due to their personalised nature, should not be subject to a door-to-door cooling-off period, and the way in which Information and Safety Standards are made generally. It was recommended that each these issues be given further consideration by the Office of Fair Trading.

It is the finding of this report that in general, the restrictions on competition in the Act and the Regulation meet the objectives of the Act and are in the public benefit. However this report finds that the Act should be amended to change the prescribed amount for door-to-door contracts to \$75 and have this amount subject to regular review, and that the Act should be amended to not restrict the ability to sue for damages for a breach of the Act to only a consumer as defined by the Act.

In some sections of the Act, the right to sue for damages as a result of a breach of the Act is restricted to consumers as defined by the Act. The definition of consumer under the Act may restrict the ability of businesses to obtain redress if they are misled by another party. Further, the Act provides that if goods acquired for the purpose of sale, exchange, lease, hire or hire-purchase the person does not acquire the goods as a consumer. There is no reference to such provisions in the second reading speeches for the Act, nor does any other jurisdiction have similar provisions in their Fair Trading Acts and the equivalent sections of the Trade Practices Act do not contain similar restrictions. As a result the effect of these provisions may mean that their application is inconsistent with the equivalent provisions in the Trade Practices Act. Therefore, further examination of the effect of these provisions is considered appropriate.

It is proposed that a further NCP review of the Act and the Regulation be conducted in ten years time.

1.0 REVIEW PARAMETERS

1.1 TITLE OF LEGISLATION

- The *Fair Trading Act 1989* (“the Act”); and
- The *Fair Trading Regulation 2001*¹ (“the Regulation”).

1.2 INTRODUCTION

This document is the Public Benefit Test (“PBT”) undertaken on the Act and the Regulation. The Act and the Regulation were identified in the *Queensland Legislative Review Timetable* (“the Timetable”) as requiring review in line with National Competition Policy (“NCP”) guidelines. The guiding principle for the review of legislation, as set down in the Competition Principles Agreement is that legislation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.

In considering the restrictions contained in the Act and the Regulation, the Department of Tourism, Racing and Fair Trading has considered fair trading and social justice issues and the balance between commercial interests and the interests of consumers.

1.3 REASONS FOR REVIEW

NCP is a series of agreements entered into between the Commonwealth, State and Territory Governments in 1995 to increase competition where it is in the public interest to do so. The objectives of NCP are to increase competition in the provision of services and products to promote economic growth, employment and higher living standards.

Key elements of NCP include:

- the extension of the competitive conduct rules of the *Trade Practices Act 1974 (Cth)* (“the Trade Practices Act”) to all businesses and State and local government enterprises;
- structural reform of public monopolies;
- third party access to essential infrastructure facilities;
- competitive neutrality between the public and private sectors;
- prices oversight of government business enterprises; and
- legislative review.

Legislative review requires all existing legislation that contains measures that restrict competition be reviewed and any associated reforms be implemented by 30 June 2002.

The reason that legislation is being reviewed is that in some instances, regulations imposed to achieve government objectives can create unreasonable restrictions on entry to a market and/or the conduct of businesses, which in turn can limit consumer choice, reduce incentives to improve business efficiency and stifle innovation.

¹ The *Fair Trading Regulation 1989* (“the 1989 Regulation”) was referred to in the Issues Paper for this review. It was, however, due for expiry at that time, and consequently has been rewritten as the *Fair Trading Regulation 2001*. It modernises regulations made under the Act, and does not materially alter potential restrictions on competitions already in existence, nor add to them. Where numbering has changed from the 1989 Regulation to the Regulation, this will be footnoted in the text.

The guiding principle for reviewing legislation, as set out in the Competition Principles Agreement, is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

All reviews involve a rigorous assessment of the benefits and costs of alternative options and take full account of employment, regional development, social, consumer and environmental effects as set out in Queensland Government's *Public Benefit Test Guidelines* ("PBT Guidelines").

The Timetable identified potential restrictions on competition in the Act and the Regulation. This review has considered those restrictions in accordance with the PBT Guidelines.

1.4 TERMS OF REFERENCE

This review is being conducted in accordance with clause 5(9) of the Competition Principles Agreement, which states that a review, without limiting itself, should:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

It is also being conducted in accordance with clause 1(3) of the Competition Principles Agreement, which requires that, where relevant, reviews take the following matters into account:

- (a) government legislation and policies relating to ecologically sustainable development;
- (b) social welfare and equity considerations, including community service obligations;
- (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (d) economic and regional development, including employment and investment growth;
- (e) the interests of consumers generally or of a class of consumers;
- (f) the competitiveness of Australian businesses; and
- (g) the efficient allocation of resources.

When examining matters identified above, consideration is to be given to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.

1.5 GOVERNMENT PRIORITY OUTCOMES

In conducting reviews, the PBT Guidelines require that only those options that are consistent with, and support, the Government's Priority Outcomes should proceed for further consideration. The Government's Priority Outcomes for Queensland are:

- More Jobs for Queensland – Skills and Innovation – The Smart State
- Safer and More Supportive Communities
- Community Engagement and a Better Quality of Life
- Valuing the Environment
- Building Queensland's Regions.

Further, the combined effects of the benefits and costs to the community as a whole must be assessed against the Government's Priority Outcomes.

1.6 TYPE OF REVIEW

A targeted public review is being undertaken based on the criteria outlined in the PBT Guidelines. It is being conducted by the NCP Unit of the Office of Fair Trading in consultation with Queensland Treasury and with the assistance of input from key stakeholders.

1.7 CONSULTATION

A two-phase consultation process has been undertaken in this review:

- Phase One: An Issues Paper was released in December 2001 seeking input from key stakeholders and the general community in relation to the restrictions identified in the Act and Regulation. The Issues Paper was posted on OFT's website and its availability was advertised in *The Courier Mail*. Copies of the Issues Paper were also provided directly to the key stakeholders. In total, 82 Issues Papers were distributed, and 34 submissions were received from individuals and organisations; and
- Phase Two: Submissions to the Issues Paper were used to inform the preparation of a consultation draft report. The consultation draft report included assessments of the benefits and costs of the restrictions identified in the Issues Paper and viable alternatives to the restrictions. The draft Report also considered a further restriction identified by one of the respondents to the Issues Paper. In May 2002 a total of 40 stakeholders from government, industry and the wider community were invited to comment on the consultation draft report. Eight submissions were received. Comments received in response to both the Issues Paper and the consultation draft report are referred to throughout this report.

2.0 LEGISLATIVE FRAMEWORK

2.1 BACKGROUND

The Act and the Regulation form the core of Queensland's consumer protection legislation and include provisions which:

- establish fair trading authorities such as the Office of Fair Trading, the Consumer Affairs Council and the Consumer Safety Committee;
- prohibit unfair trading practices such as mock auctions and the use of obscene material in relation to unsolicited selling, regulate door-to-door trading, and provide minimum requirements for express warranties;
- mirror provisions of the Trade Practices Act in regulating trade practices, aiming to create a national scheme with consistency between jurisdictions (a list of these provisions is included at Appendix A);
- provide for Information and Safety Standards for products and services (with the specifics of the Standards provided for in the Regulation); and
- provide for codes of practice – if and when enacted.

The Act and the Regulation commenced on 21 September 1989 and consolidated a number of pieces of Queensland consumer protection legislation, including the:

- *Unordered Goods and Services Act 1973*;
- *Consumer Affairs Act 1970*;
- *Door to Door (Sales) Act 1966* (“the Door-to-Door Act”); and
- *The Mock Auctions Act 1973* (“the Mock Auctions Act”).

The Act also extended the consumer protection provisions of Part V of the Trade Practices Act to the conduct of individuals and other non-corporate entities. This extension of provisions was necessary as the primary focus of the Trade Practices Act is to regulate the behaviour of corporations, and therefore the Trade Practice Act does not necessarily cover sole traders or partnerships. To achieve this end and to ensure consistent national regulation, the States and Territories each introduced Fair Trading or Consumer Affairs Acts in 1989 to cover the conduct of non-corporate traders.

2.2 DEFINITION OF A CONSUMER

One of the other significant aspects of the Act is that the Act defines who is a consumer. This is significant as the application of some provisions of the Act is limited by this definition. Section 6(1) of the Act defines a consumer as a person who acquires goods or services or an interest in land as a consumer. In addition, a person acquires goods or services or an interest in land as a consumer if:

- the person is an individual and acquires the goods, services or interest [in land] otherwise than for a business carried on by the person, whether as an individual or a member of a business partnership; or
- the price of the goods, services or interest [in land] is not more than \$40,000.²

However, if a person acquires goods for resupply by way of sale, exchange, lease, hire or hire-purchase, the person does not acquire the goods as a consumer.

² Section 6(2) of the Act

2.3 OBJECTIVES OF THE ACT

The principal objective of the Act, stated specifically in section 3, is to provide for an equitable, competitive, informed and safe market place. In introducing the Act and the Regulation in 1989, the Government view was that equity could be achieved by reducing the imbalance in the bargaining positions of traders and consumers by prohibiting, or limiting, unfair trading practices that impose harsh and unreasonable conditions on contracts with consumers.³ Additionally, it was considered that the Act would help achieve an equitable marketplace as:

“the benefits of [the Act] are many and...are not restricted to any one section of the community. Consumers will gain from the added measure of protection, which also covers transactions by the business and farming sectors in their capacity as consumers of goods and services. Industry and commerce will benefit not only from the promotion of competition but also from uniformity with the major provisions contained in legislation in other States”.⁴

Competitiveness was considered to be achieved as:

“[the Act]... seeks to promote fair and honest competition. Competition, which lies at the very heart of our economic system, will be strengthened. Businesses will be obliged to compete to a greater extent on the fundamentals of price, quality and service to the obvious benefit of all Queenslanders”⁵

An informed and safe marketplace is most obviously achieved through the mechanism of Information and Safety Standards and Ministerial Prohibition on unsafe goods and services in the marketplace. However, safety in the marketplace is also achieved through provisions such as restricted door-to-door trading hours, which can reduce the intimidating impact of a door-to-door approach.⁶

³ *Hansard*, 19 April 1989, p.4876

⁴ *ibid*, p.4878

⁵ *ibid*, p.4877

⁶ *ibid*, p.4877

3.0 RESTRICTIONS ON COMPETITION

3.1 RESTRICTIONS

The following restrictions on competition in the Act and the Regulation have been identified⁷, and will be examined individually in this report:

Provision of Act/Regulation	Restriction
Mock Auctions	Prohibition on a person conducting a mock auction of goods
Obscene material in relation to unsolicited goods	Prohibition on using or sending obscene material to encourage consumers to pay for unsolicited goods
Door-to-Door Trading – General	Regulates behaviour of person engaging in door-to-door trading
Door-to-Door Trading – Prescribed Amount	Sets a dollar value (\$50) which if exceeded makes a contract become ‘prescribed’ and therefore subject to door-to-door provisions
Door-to-Door Trading – Cooling-off Period	Sets a ten-day cooling-off period for prescribed door-to-door contracts
Door-to-Door Trading – No payment or supply during cooling-off period	Prohibits door-to-door dealers (“dealers”) from taking payment from or supplying services to consumers during the cooling-off period
Door-to-Door Trading – Restricted Trading Hours	Restricts door-to-door trading to 9am-6pm weekdays, 9am-5pm Saturdays, and prohibits door-to-door trading completely on Sundays and public holidays
Door-to-Door Trading – Purpose of call and identification	Requires dealers to state the purpose of their call, and produce identification, when calling on a consumer
Door-to-Door Trading – Exemptions	There are two types of exemptions: 1. Dealers can apply to be exempt from any or all door-to-door provisions; and 2. Contracts for insurance, credit and emergency repairs are exempt from door-to-door provisions
Information Standards	Requires products and services to meet the specifications of an Information Standard where such Standard is prescribed by the Regulation
Safety Standards	Requires products and services to meet the specifications of a Safety Standard where such Standard is prescribed by the Regulation
Ministerial Prohibition of unsafe goods and services	Empowers the Minister to restrict or prohibit the sale of unsafe goods and services
Specific Standards prescribed by the Regulation	Standards prescribed by the Regulation which are distinctive to Queensland and are not uniform

3.2 STATUS OF NCP REVIEWS IN OTHER JURISDICTIONS

The following table identifies the status of NCP reviews of Fair Trading legislation in other jurisdictions:

State/Territory	Review Status
New South Wales	NCP reviews of the <i>Fair Trading Act 1987</i> (“the NSW Act”) and the <i>Door-to-Door Sales Act 1967</i> (“the NSW Door-to-Door Act”) are currently being finalised.
Victoria	<i>Fair Trading Act 1999</i> (“the Victorian Act”) repealed the <i>Fair Trading Act 1985</i> and the <i>Consumer Affairs Act 1972</i> . The Victorian Act was subject to NCP review when it was introduced. The NCP review found that the restrictions in the Victorian Act were justifiable in the public benefit. The Victorian Act is currently

⁷ The provisions in the Act which mirror provisions of the Trade Practices Act have not been included for assessment as they are considered to be pro-competitive.

State/Territory	Review Status
	the subject of a broad policy review.
Western Australia	A general review of the <i>Fair Trading Act 1987</i> , including some NCP assessment, is ongoing
South Australia	NCP review of the <i>Fair Trading Act 1987</i> is ongoing
Tasmania	<i>Fair Trading Act 1990</i> (“the Tasmanian Act”) was subject to a minor NCP review. It was determined that the only restrictive provisions of the Tasmanian Act were those contained in the <i>Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996</i> , the sole operational Code under the Tasmanian Act. Tasmania has repealed its <i>Mock Auctions Act 1973</i> as a result of NCP review. Additionally, the <i>Door to Door Trading Act 1986</i> , the <i>Flammable Clothing Act 1973</i> and the <i>Goods (Trade Description) Act 1971</i> were subject to NCP review. Restrictions in all three of these Acts were considered justifiable in the public benefit and retained.
Northern Territory	Review of the <i>Consumer Affairs and Fair Trading Act 1990</i> (“the Northern Territory Act”) found that restrictions relating to door-to-door trading and Safety and Information Standards were justifiable in the public benefit. The other major restrictions reviewed in the NCP review of the Northern Territory Act related to the use of (credit) report agencies and their disclosure of information
Australian Territory	Capital NCP reviews have been scheduled and are ongoing for the <i>Fair Trading Act 1992</i> , the <i>Door-to-Door Trading Act 1991</i> and the <i>Consumer Affairs Act 1973</i> (which regulates Safety and Information Standards).

3.3 GENERAL RATIONALE FOR GOVERNMENT INTERVENTION

In general, the main reason for governments to intervene in markets is to address the failure by markets to operate efficiently or deliver outcomes that reflect community standards. The main forms of market failure that are relevant in relation to the trading activities covered by the Act are based on: the propensity for information problems, usually referred to as information asymmetries; and the likelihood of adverse third party effects, often referred to as negative externalities.

Under the Act, information asymmetries arise because the circumstances under which trading takes place mean that consumers are often at a severe information disadvantage compared with those individuals and firms providing the services. The scope of the information problem is even greater when users are first-time or irregular purchasers or the goods or services are complex in nature. The third party effects arise because inappropriate conduct on the part of traders can impact adversely on other members of a consumer’s household, subsequent purchasers of the goods second-hand, the reputation of other service providers and the general community.

The nature of the problem is such that under the circumstances covered by the Act, it is too costly for individual consumers to overcome the information problems and third party effects without some form of government intervention. Without some form of assistance, many consumers are likely to have difficulty in assessing in advance whether the goods and services are appropriate for their needs, safe to consume or operate and represent value for money.

It is often argued that as long as consumers are aware of potential risks and their implications, they should be free to choose whether to assume the risk or take action to reduce the risks accordingly. However, relying on consumers assessing the risks and taking individual actions in response also ignores the often substantial transaction costs associated with overcoming the information problem relative to the efficiency of some form of government intervention. That is, the transaction costs of identifying quality goods and service providers and rectifying problems can reduce the effectiveness of market mechanisms and provide an important argument for some form of regulation to improve efficiency.

Regular consumers of a particular good or service will usually be in a better position to assess the quality, suitability and value of a potential purchase, thereby lessening the information problem. However, it is often not possible to remove the information problem even for such educated consumers. Furthermore,

the type of trading covered by the Act often involves circumstances where poor performing traders can simply move on to selling other products or other locations where potential consumers are unaware of their sub-standard products or practices. As a result, the penalty for poor performance may be weak in an unregulated market.

The potential for negative externalities is also an important consideration that distinguishes the trading activities covered by the Act from many other services and products. Negative externalities or adverse third party effects occur where individuals other than the consumers and/or providers of the goods and services are affected. For example, a Safety Standard may be in place to prevent injury occurring through normal use of a product or service. If the Safety Standard was not in place and injuries were to increase, this would place additional demands on the provision of medical and legal services to deal with the aftermath of the injuries.

Besides adversely affecting the ability of consumers to make fully informed choices, information problems could also adversely affect more responsible traders. If potential consumers are unable to assess quality standards through market mechanisms, service providers offering better quality services can find it difficult to receive an appropriate reward for the additional effort and expenditure required. This reduces the incentive to provide higher quality services or in the worst case, adhere to minimum service standards. Providers seeking to offer higher quality services may leave the market or be forced to lower their standards over time.

Although a strong economic argument can be made for some form of regulation of particular activities, determining the most appropriate form is more difficult. Consequently, intervention should ideally focus on addressing the market failure while minimising administrative and regulatory costs consistent with meeting the objectives of the regulation.

4.0 MOCK AUCTIONS

4.1 BACKGROUND

Section 56(2) of the Act provides that a mock auction occurs if, during the course of the auction:

- goods are sold for less than the highest bid made by the purchaser, or part of the purchase price is repaid or credited to the purchaser (however, an auction is not a mock auction if the reduction in price or credit is due to a defect discovered or damage done after the highest bid); or
- the right to bid is restricted to persons who have bought or agreed to buy other goods; or
- goods are given away or offered as gifts.

Typically, mock auctions are known to include some of the following features:

- gifts are offered to encourage potential buyers to bid;
- potential bidders are told they can only participate if they buy something else;
- pre-auction advertising of high quality items at unrealistically low reserve prices⁸; and
- lots at the auction are concealed or under wraps, with attendees led to believe the concealed lots are something that they are not.

In essence, mock auctions are a form of deceptive and misleading conduct conducted by fly-by-night operators with a potential to cause significant financial detriment to unwary consumers. Organisers of mock auctions are generally not licensed auctioneers under the *Property Agents and Motor Dealers Act 2002* (“the PAMD Act”). Mock auctions gained notoriety in the early 1970s, particularly in Brisbane where concerns over a particular mock auction in the city led to the realisation that there was no regulation over this type of activity⁹. In response, and in step with other jurisdictions at the time, the Mock Auction Act was enacted in 1973. Eventually the Mock Auction Act was repealed on introduction of, and its provisions transferred to, the Act in 1989

The Office of Fair Trading receives no complaints about mock auctions. It is unclear if this is due to the effectiveness of the prohibition¹⁰ or whether it is because mock auctions are now viewed as an outdated scam to which a contemporary consumer is unlikely to be susceptible¹¹.

Relevance to the Objectives of the Act and to Government Priority Outcomes

The prohibition of mock auctions helps protect consumers from conduct intended to be deceptive and misleading, meeting the objective of the Act of a safe and equitable marketplace. This restriction is consistent with the Government Priority Outcome of safer and more supportive communities.

Other Jurisdictions

Victorian and South Australian Fair Trading Acts contain similar provisions. The Australian Capital Territory and the Northern Territory do not regulate mock auctions. Tasmania recently repealed its *Mock Auction Act 1973*. Western Australia regulates mock auctions through the *Auction Sales Act 1973*. It

⁸ “Mock Auctions/One Day Sales”, Reading Borough Council (UK) Website

⁹ *Hansard*, 25 October 1972, p.1316

¹⁰ Legal Aid Queensland, Queensland Retailers and Shopkeepers Association, and the Office of Fair Trading Compliance Division submission to Issues Paper

¹¹ Office of Fair Trading Policy and Legislation Division and Toowoomba Regional Office submission to Issues Paper

contains similar provisions to the Act but provides that a mock auction can also be when the sale of any lot is obtained by deception¹².

New South Wales regulates through the *Mock Auction Act 1973*. It contains similar provisions to the Act, but is applicable only to auctions of lots of the following goods: plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament or any musical or scientific instrument or apparatus.¹³

4.2 REGULATORY ALTERNATIVE: DEREGULATION

Under this alternative, the mock auction provisions of the Act would be repealed. In their place, provisions of the Act relating to misleading or deceptive conduct and false or misleading representations (sections 38 and 40 of the Act respectively) could be used to regulate mock auctions. The fraud provisions of the *Criminal Code* may also apply to mock auctions.¹⁴ The following table outlines the likely impacts of moving to this alternative, namely deregulation of mock auctions:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Protection possible through other legislation 	<ul style="list-style-type: none"> • No proactive or specific protection against mock auctions; and • Potential for increased numbers of mock auctions to start up if prohibition lifted
Industry	<ul style="list-style-type: none"> • No advantages 	<ul style="list-style-type: none"> • Potential for negative perceptions of licensed auctioneers if mock auctions recur, may lead to negative demand for auction services
Government	<ul style="list-style-type: none"> • Reduction in administrative costs associated with the Act (minor) 	<ul style="list-style-type: none"> • Inconsistent with objectives of the Act for an equitable and informed marketplace; • Inconsistent with Government Priority Outcome of safer communities; • Increased cost of enforcement under general provisions of the Act and/or other legislation; and • Cost of reintroducing mock auction regulation and enforcement should mock auctions recur and other legislation prove ineffective

Results of Consultation

During consultation on the Issues Paper there was little support for this alternative. As a significant stakeholder in the auctioneering industry, the Real Estate Institute of Queensland supported retention of the mock auction prohibition as both a means of protecting consumers and the integrity of the auctioneering industry. Other stakeholder groups expressed similar sentiments. In supporting this alternative, the Policy and Legislation Division of the Office of Fair Trading submitted that mock auctions are an anachronism in the contemporary market and hardly likely to draw in consumers as much as other more serious and elaborate scams are. There was no comment on mock auctions during the second-round of consultation.

¹² Section 25(2)(d) of the *Auction Sales Act 1973*

¹³ Section 3(1) of the NSW *Mock Auction Act*

¹⁴ Sections 430 (Conspiracy to defraud) and 431 (Frauds on sale or mortgage of property) of the *Criminal Code* may possibly apply

4.3 CONCLUSIONS AND RECOMMENDATIONS

Removal of the prohibition may lead to the re-emergence of mock auctions. Additional cost may be incurred in bringing enforcement proceedings under the general provisions of the Act or the Criminal Code (if applicable) resulting in a less efficient means of achieving the objective of an equitable market place. The re-emergence of mock auctions is unlikely to meet Government Priority Outcomes, as there would not be a safer and more supportive community. On the contrary, removal of the prohibition brings with it the risk that mock auctions would again start up in the community, with the potential to cause financial detriment to consumers. In addition, licensed auctioneers who act scrupulously and abide by the conduct provisions of the PAMD Act may suffer negative consumer perceptions if mock auctions were to start up again. Based on the likely impacts on stakeholders of moving to deregulation, there are likely to be very minor costs in retaining the prohibition but these are outweighed by significant consumer, industry and government benefits. The information problem posed by mock auctions, whereby operators have a fly-by-night operation designed to mislead consumers, is best overcome by specific government intervention.

Recommendation: That the prohibition in the Act on the conduct of mock auctions be retained

5.0 OBSCENE MATERIAL, IN RELATION TO UNSOLICITED GOODS

5.1 BACKGROUND

Section 55 of the Act prohibits suppliers from sending obscene material in connection with unsolicited offers for goods, or advertising the existence of obscene material to persons who have not requested that they receive such offers. “Obscene” is defined in section 55(4) of the Act as including an emphasis on matters of sex or calculated to encourage depravity.

In essence, a business is prevented from using obscene material as a marketing tool where unsolicited offers are concerned. This provision is part of a broad framework of legislation regulating/prohibiting obscene material and images in Queensland generally. Offences in relation to obscene material are also provided for in:

- Section 228 of the *Criminal Code*, which makes it a misdemeanour to publicly distribute, sell or expose obscene material (“obscene” is not defined for the purposes of the *Criminal Code* but is defined at the Common Law);
- Section 12 of the *Vagrants Gaming and Other Offences Act 1931* (“the Vagrants Act”), which makes it an offence to print or publish obscene material. The definition of “obscene” in the Vagrants Act is substantially similar to that in the Act; and/or
- The *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991*; or particularly the *Classification of Publications Act 1991* (collectively, “the classification legislation”).

However the obscene material provision of the Act is distinct in regulating unsolicited goods. The classification legislation is restricted in its application to films (including computer images) and publications, while the definition of “publication” in the classification legislation would not necessarily include an advertising brochure¹⁵, which may be captured by the obscene material provision of the Act.

The Office of Fair Trading has not effected any prosecutions for breaches of this provision. Instead, when complaints are received, undertakings are sought from the offending party that they will cease using such advertising or risk prosecution. The low number of complaints may be because complainants are unaware of the prohibition under the Act and/or where to direct complaints. Or it may be that traders refrain from using obscene material in their promotional activities as it may simply serve to alienate a consumer from the trader’s products. Stakeholder feedback did not provide any indication on these issues.

Relevance to the Objectives of the Act and to Government Priority Outcomes

The restriction on obscene material in the Act has a two-fold role in meeting the objectives of the Act. On one hand, the restriction restricts the supply of obscene material that could have a detrimental affect on the psychological wellbeing of persons who are exposed to it, particularly minors. This meets the safety objective of the Act, particularly in terms of psychological safety, as well as the Government Priority Outcome of safer and more supportive communities. On the other hand, the restriction aims to prevent consumers being misled by obscene images that mask the real nature of the product or service being offered for sale and that are not designed to inform the market. This meets the informed marketplace objective of the Act.

Other Jurisdictions

No other State or Territory has a similar provision in their Fair Trading legislation.

¹⁵ Section 3 *Classification of Publications Act 1991*

5.2 REGULATORY ALTERNATIVE: DEREGULATION

Under this alternative, section 55 of the Act would be repealed. The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Potential for protection under the provisions of the Vagrants Act or the <i>Criminal Code</i>; and • More freedom to make choices about seeing or receiving obscene material – less censorious environment 	<ul style="list-style-type: none"> • Increased risk of offence and harm caused by exposure to obscene material, particularly for minors; • Increased risk of consumers being misled about due to obscene material which may distract consumers from exercising their usual levels of discretion and caution when purchasing products; • Other Acts do not specifically regulate unsolicited offers; and • Consumers cannot avoid unsolicited goods as easily as they can for goods they actively seek out
Industry	<ul style="list-style-type: none"> • More advertising options for traders who are able to use obscene images to promote goods – “sex sells”; and • Allows businesses which are currently restricted in their advertising and promotions the ability to advertise their products and services 	<ul style="list-style-type: none"> • Repeal may mean entry into the market of traders who routinely use obscene material in promotion of their products – may result in a negative reputation for industry and reduced demand
Government	<ul style="list-style-type: none"> • Reduced administrative costs under the Act (minor) 	<ul style="list-style-type: none"> • Inconsistent with objectives of the Act to ensure safety (in this case, psychological safety) in the marketplace; • Inconsistent with Government Priority Outcomes of safer communities; and • Costs of amending legislation

Results of Consultation

In the Issues Paper phase of consultation, there was no support for this alternative. For each of the stakeholders that commented on this restriction, it was agreed that the restriction was necessary in protecting vulnerable consumers from harmful images. There was no comment on this alternative in the second stage of consultation.

5.3 CONCLUSIONS AND RECOMMENDATIONS

This alternative does not meet the objectives of the Act, as it does not help to achieve a safe marketplace. Nor does it meet Government Priority Outcomes, as it does not help to achieve safer communities. The current restriction specifically targets unsolicited sales, and repeal of the provision would see this particular trading practice, used in connection with obscene material, be essentially unregulated. The use of obscene material by traders is not designed to inform the consumer about the associated unsolicited product, and so therefore this alternative does not address the basic information problems which exist in the marketplace, a problem this restriction is designed to overcome.

Recommendation: That the prohibition in the Act on the use of obscene material in relation to unsolicited goods be retained

6.0 DOOR-TO-DOOR TRADING - GENERAL

6.1 BACKGROUND

Under section 57 of the Act, door-to-door trading is where:

- a person goes from place to place or makes telephone calls seeking out consumers who may be prepared to enter into contracts for the supply of goods or services; and
- that person, or some other person, then enters into negotiations with those prospective consumers with a view to the making of such contracts.

A dealer is a person who in the course of door-to-door trading enters into negotiations with another a consumer, with a view to the making of a contract for the supply of goods or services to that other person; or calls on another person for the purpose of entering into such negotiations. This applies whether or not the dealer is the supplier of the goods or services.

The Act only regulates those activities associated with contracts that satisfy the conditions for a prescribed contract under the Act¹⁶. Negotiations leading to the formation of the contract must take place between the consumer and a dealer in each other's presence in Queensland at a place other than trade premises of the supplier, and that the dealer's presence must be unsolicited by the consumer.

In practical terms, door-to-door trading is a surprise approach. The consumer has not invited the approach nor have they actively sought out the products and services being sold. As a result, consumers are at a disadvantage in dealing with the dealer as they have not prepared themselves to consider a purchase or entering into a contract. To protect consumers who find themselves in this situation, regulation of door-to-door trading was introduced through the Door to Door Act in 1966. During debate, Parliament heard of how door-to-door salespeople were operating with highly developed sales techniques including use of "prayer, acting methods and 'magnetic compelling force' to high-pressure unwilling householders into deals that cost them hundreds of pounds"¹⁷.

Mention was also made of how door-to-door salespeople were using misleading conduct to coerce consumers into buying goods. An example was that salespeople, in attempting to sell encyclopedias and other educational books, would falsely represent the books were approved by the Government, and/or were vital to a child's ongoing education¹⁸. It was recognised that once a dealer got into a consumer's residence, they were able to exert considerable influence and pressure on the consumer to get a sale and that in this situation, the consumer may find it difficult to escape the salesperson's pressure¹⁹. Moreover, it was also recognised that there was a vast gulf between a consumer voluntarily going to a shop to make enquiries about a purchase, and a consumer having someone on their doorstep²⁰.

These examples formed the background to the objectives of the Door to Door Act, which, as stated by the then Minister during the Second Reading Speech, include:

"providing a "cooling-off" period, and during this...period an unhappy or unwilling prospective...purchaser who has second thoughts about the agreement or offer may, if he so desires, terminate the agreement or offer made under the influence of a door-to-door salesman or saleswoman"²¹.

¹⁶ For details on what constitutes a "prescribed" contract, refer to section 58 of the Act

¹⁷ *Hansard*, 29 November 1966, p.2015

¹⁸ *ibid*, p.2019

¹⁹ *ibid*, p.2012

²⁰ *ibid*, p.2022

²¹ *Hansard*, *ibid*, p.2243

Upon its commencement in 1989, the Act repealed the Door to Door Act. However, rather than completely incorporating the provisions of the Door to Door Act, the Act also incorporated model legislation for door-to-door sales developed by Tasmania²². As a result, the door-to-door provisions of the Act have some key differences to the Door to Door Act, including:

- a ten-day cooling-off period;
- including both cash and credit transactions;
- setting a prescribed amount of \$50 for contracts to be considered door-to-door contracts; and
- excluding a small number of products and services from the provisions, rather than prescribing a list of goods and services that were covered by the provisions.

Over the past five years, the Office of Fair Trading has received on average 56 complaints per annum on door-to-door trading. Further, anecdotal evidence by the Office of Fair Trading suggests that as many as 300 door-to-door complaints and enquiries are handled and conciliated each year by telephone staff without the complaints becoming formally investigated²³. Complaints cover a variety of door-to-door issues, come from all regions of the State, and cover a range of products and services.

Relevance to Objectives of the Act and Government Priority Outcomes

In the past, door-to-door dealers have adopted a number of practices designed to coerce or harass consumers. Potential buyers were also forced to rely on the information provided by the seller without an opportunity to confirm its validity. In addition, the lack of a permanent shopfront made it difficult for customers to lodge complaints or seek redress for inappropriate behaviour. The restrictions identified in the Act therefore seek to ensure an informed and safe market by regulating dealers and suppliers' business conduct to protect consumers from coercion and harassment. In addition, the restrictions achieve the Government Priority Outcome of safer communities.

Other Jurisdictions

In the 1980s, jurisdictions adopted substantially similar door-to-door regulations. Even so, there are differences between jurisdictions. Appendix B provides a more detailed description of the similarities and differences between jurisdictions on regulation of door-to-door trading. The major differences are to be found in New South Wales and Victorian legislation. The Victorian Act terms door-to-door trading as a "contact sale" and makes provision for "non-contact sales", including approaches made by telephone and e-mail. The NSW Door-to-Door Act does not regulate cash sales. In addition, New South Wales, Western Australia, the Australian Capital Territory and Tasmania all administer specific Door-to-Door Acts in addition to a Fair Trading Act. In all other Australian jurisdictions, door-to-door provisions are contained in Fair Trading Acts.

6.2 REGULATORY ALTERNATIVES

6.2.1 ALTERNATIVE 1: DEREGULATION

Under this alternative, Division 4 of the Act would be repealed. Consumers adversely affected by a door-to-door transaction could instigate legal action to sue for redress. It should be noted, however, that there would remain some standards through industry voluntary codes of conduct, such as for members of both the ADMA Code and the Direct Selling Association of Australia Code of Practice ("the DSAA Code").

The following table outlines the likely impacts of moving to this alternative:

²² *Hansard*, 19 April 1989, p.4877

²³ Gold Coast Regional Office of Fair Trading submission

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Greater choice through increased exposure to door-to-door products and services; • Potential for lower prices due to increased competitors in the market; and • Some form of continued regulation through voluntary industry codes may offer similar consumer protection to that found in the Act 	<ul style="list-style-type: none"> • Reduction in privacy and greater demands on consumers' personal time; • No mandatory cooling-off period, meaning some consumers may make unnecessary or pressured decisions; • No opportunity to comparison shop once contract is signed; • Security concerns due to unregulated trading hours and conduct standards; • Increased potential for harassment and coercion and general high-pressure tactics; and • No means of readily identifying dealers
Industry	<ul style="list-style-type: none"> • Reduced compliance costs; • More incentive for new dealers to enter the market; • Can reach more consumers because of unrestricted trading hours; and • Immediate receipt of payment, quickening turnover and reducing losses that may occur when contracts are rescinded under a cooling-off period 	<ul style="list-style-type: none"> • Negative consumer response to increased intrusions onto privacy may lead to decreased consumer demand and consumer confidence; and • Unscrupulous dealers may enter the market to take advantage of deregulated state, casting a negative impression on dealers as a whole
Government	<ul style="list-style-type: none"> • Increased competition may result in more jobs, consistent with Government Priority Outcomes; and • Reduction in administrative costs associated with regulating door-to-door trading 	<ul style="list-style-type: none"> • Inconsistent with the objectives of the Act – consumers will not be informed and there will be safety concerns; • Inconsistent with Government Priority Outcomes of safer communities; and • Costs of amending legislation and educating the public about the change

Results of Consultation

There was minimal support for this alternative during the first phase of consultation. The overwhelming majority of stakeholders supported continued regulation to protect vulnerable consumers from high-pressure sales tactics. It was recognised that door-to-door trading is not a hugely popular method of sale in the contemporary market but that while it existed at all, it needed to be regulated. Industry submissions suggested that existing voluntary codes would be an effective replacement to regulation, but a number of other submissions felt there was a lack of a consistent industry body to maintain and administer a code that would adequately protect all consumers. In the second phase of consultation, the Australian Direct Marketing Association submitted that they endorsed the current regulation of door-to-door trading through the Act on the proviso that clarity was given to what activities it covered (namely, the role of telemarketing).

Conclusion

This alternative is inconsistent with the objectives of the Act and with Government Priority Outcomes. There is overwhelming stakeholder support for continued regulation.

6.2.2 ALTERNATIVE 2: VOLUNTARY CODE OF CONDUCT

Under this alternative model, the door-to-door provisions of the Act would be repealed, and dealers would be encouraged to abide by a voluntary code of conduct, developed to replace the regulatory regime. Voluntary codes of conduct for door-to-door trading are already in existence in the marketplace. For

example, both the ADMA Code and the DSAA Code prescribe conduct standards for their members that are in addition to those imposed by the Act.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Decreased compliance and administrative costs under legislation could potentially be passed on to consumers in the form of lower prices; • A voluntary code may make it more attractive for potential dealers to enter the market – if so this will enhance competition which may then provide greater choice and quality for consumers; and • Some form of continued consumer protection through a voluntary code 	<ul style="list-style-type: none"> • Code not enforceable, meaning no guarantees for consumers that they could have issues resolved satisfactorily under a voluntary code’s dispute resolution mechanism; and • Door-to-door market is diverse and a voluntary code may not capture all dealers, particularly smaller dealers – this would leave consumers without guarantees of protection in all cases
Industry	<ul style="list-style-type: none"> • Potential for reduced compliance and administrative costs; • For existing members of voluntary codes, this alternative would mean they could continue to trade on essentially the same basis as is currently the case, but with the added benefit of not being bound by the additional requirements of the Act; and • Members of a voluntary code can use their membership as a means to engender consumer confidence in their business practices 	<ul style="list-style-type: none"> • Smaller traders with low profit margins and turnover may struggle to comply, particularly if membership requirements are onerous and/or there are ongoing membership fees; • Diverse market creates difficulties in administering a code that is fair and equitable to all members. There is also not a consistent industry body that could assume responsibility for administration of the code; and • Potential for decreased consumer confidence in the industry – a voluntary code may not, in the minds of consumers, carry as much authority as an industry that is regulated by specific legislation
Government	<ul style="list-style-type: none"> • Voluntary code may reduce regulatory burden for business which may then result in an encouragement for more door-to-door salespeople to be employed, which is then consistent with Government Priority Outcome of more jobs; and • Could reduce costs of administering and enforcing the Act 	<ul style="list-style-type: none"> • Inconsistent with the objective of the Act to have an equitable marketplace – not all traders would necessarily be party to a voluntary code and therefore not all traders would be competing equitably; • Inconsistent with Government Priority Outcome of safer and more supportive communities – no guarantees that consumers would receive protection such as a cooling-off period; and • Costs of amending the Act and educating the public about the change

Results of Consultation

In the Issues Paper phase, industry groups were generally supportive of this alternative. The Direct Selling Association, for example, submits that their DSAA Code has sufficient consumer protection to be as effective as the current regulatory regime. However all of the non-industry responses were opposed to a voluntary code. The main concern was that the industry’s diverse nature meant that membership of the voluntary code would not be sufficient to guarantee consumer protection as per the objectives of the Act. Submissions from the Office of Fair Trading and the Queensland Retailers and Shopkeepers Association suggested that the lack of a consistent industry body for code administration would also be problematic.

In the second phase of consultation, Optus submitted that a voluntary code would duplicate processes they already have in place and that, therefore, the current arrangements are preferable.

Conclusion

A voluntary code would not ensure the objective of a safe, fair and competitive marketplace to the same extent as the current provisions, as adherence to the code's provisions would not be mandatory. A voluntary code may not achieve a safe marketplace for all consumers, and is, therefore, not as consistent with Government Priority Outcomes. Additionally, the door-to-door industry is made up of a diverse group of traders of varying sizes and resources. Achieving consistency of compliance with a voluntary code in such an industry would be impractical.

6.2.3 ALTERNATIVE 3: MANDATORY CODE OF CONDUCT

Under this alternative model, the door-to-door provisions could be repealed and a mandatory code of conduct prescribed under the Act²⁴. A mandatory code of conduct may provide similar conduct restrictions to those imposed by legislation. In addition, a mandatory code, if successfully implemented and adhered to, may be an initial step towards eventual industry self-regulation.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> As a mandatory code is essentially another form of regulation, consumers could be confident in having the same level of protection in the door-to-door trading process as they currently have; and Mandatory codes are enforceable, therefore consumers would be able to pursue complaints through a regulated resolution process 	<ul style="list-style-type: none"> Reduced enforcement and penalties for a mandatory code under the Act may be an insufficient deterrent for unscrupulous traders to be part of the market
Industry	<ul style="list-style-type: none"> Potentially a first step towards a voluntary code; and No real change in status quo for dealers 	<ul style="list-style-type: none"> Potential for reduced consumer confidence in a code, leading to decreased demand
Government	<ul style="list-style-type: none"> Continues to meet the objectives of the Act, as well as Government Priority Outcomes; and Move from legislation to code can be seen as an attempt to decrease regulatory burden 	<ul style="list-style-type: none"> Increased costs in developing the code, including formation of a code-administering body, amending legislation, and educating the public about the change, when ultimately the mandatory code may achieve the same result as legislation currently does

Results of Consultation

There was no specific interest in the concept of a mandatory code of conduct during either phase of consultation. Stakeholders generally were supportive of either regulation through the Act, or regulation via an industry-based voluntary code of conduct.

Conclusion

While this alternative would generally be consistent with the objectives of the Act, this would come with the additional costs of developing, implementing and administering the mandatory code model. Such a

²⁴Section 88A of the Act provides that code of practice may be prescribed under the Regulation.

cost would be expended to achieve a substantially similar regulatory regime to that which is already in place, effectively negating any benefits of moving to this alternative.

6.3 CONCLUSIONS AND RECOMMENDATIONS

The objectives of the Act are best met by retaining the current door-to-door provisions of the Act. Deregulation of door-to-door trading would have significant costs for consumers with few benefits. A voluntary code of conduct would benefit industry and have the potential to benefit consumers, however the success of a voluntary code relies heavily on the cohesiveness of the industry it will be used in. The door-to-door industry is made up of a varied group of participants to the extent that the necessary cohesiveness for the voluntary code to succeed could not be achieved. In addition, a voluntary code is unlikely to meet the objectives of the Act to the same extent that the current provisions do. A mandatory code would result in significant start up costs for government but would likely achieve the same result as is currently the case. The current door-to-door provisions of the Act are consistent with Government Priority Outcomes, as they seek to protect the interests of consumers and promote safer communities.

Recommendation: That the regulation of door-to-door trading through the Act be retained

7.0 DOOR-TO-DOOR TRADING – PRESCRIBED AMOUNT

7.1 BACKGROUND

Under section 59 of the Act, a door-to-door contract is not subject to a cooling-off period, and does not need to contain the contractual requirements of section 61(1) of the Act, unless it is worth more than \$50. This is the “prescribed amount”. The \$50 amount was introduced in line with the model legislation developed by Tasmania for door-to-door sales, and has not changed since the Act’s enactment in 1989.

Essentially, all contracts worth under \$50 are exempt from door-to-door provisions of the Act. Examples of goods and services that may be typically sold door-to-door for under \$50 include magazine subscriptions and discount vouchers, and services such as lawn mowing and house cleaning²⁵. Because of the relatively low dollar values involved, dealers of these types of goods and services may typically be smaller and/or solo operators for whom compliance with the door-to-door provisions of the Act is onerous. In effect, the prescribed amount creates a competitive benefit for these small dealers because they do not have to comply with door-to-door provisions. For consumers, the prescribed amount removes the need for a cooling-off period and a prescribed contract to be provided for goods and services that are under \$50. Typical items under \$50, particularly services such as mowing and house cleaning, are generally of immediate use to the consumer, with no value in having to wait for the ten-day cooling-off period to expire.

The Office of Fair Trading has received no complaints in the last five years about the value of the prescribed amount. Some stakeholders have suggested that the \$50 prescribed amount is practically irrelevant in the contemporary marketplace, with few, if any, goods and services under \$50 being offered door-to-door²⁶. On the other hand, it was suggested that, in an effort to avoid door-to-door provisions, traders are increasingly offering goods and services for sale for less than \$50²⁷.

Relevance to the Objectives of the Act and Government Priority Outcomes

By prescribing an amount of \$50, the Act effectively creates a distinction between small and large door-to-door transactions. Dealers whose primary business is in these smaller transactions are not obliged to comply with the Act, saving them compliance and administrative costs, and possibly enabling them to attempt to compete with dealers in larger transactions who might presumably have more resources at their disposal. These factors help to achieve the objective of the Act to provide for an equitable and competitive marketplace.

Other Jurisdictions

The \$50 prescribed amount is uniform for door-to-door provisions across all jurisdictions, except in New South Wales where the NSW Door-to-Door Act does not prescribe any amount. However, in making a submission to the Issues Paper, the New South Wales Department of Fair Trading submitted that during its review of the NSW Door-to-Door Act, submissions were made in support of a prescribed amount of \$110 linked to an appropriate indicator.

7.2 REGULATORY ALTERNATIVES

7.2.1 ALTERNATIVE 1: DEREGULATION

²⁵ Office of Fair Trading Policy and Legislation submission to the Issues Paper

²⁶ Direct Selling Association of Australia/Tony Davis & Associates submissions to the Issues Paper

²⁷ Office of Fair Trading Cairns district office submission to the Issues Paper

Under this alternative, the prescribed amount provision of the Act would be repealed. Door-to-door contracts for goods and services currently worth less than \$50 would be subject to all door-to-door provisions of the Act.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> All door-to-door contracts would be subject to the door-to-door provisions of the Act, meaning that all consumers entering into a door-to-door contract receive benefits of a cooling-off period and prescribed contractual information 	<ul style="list-style-type: none"> Goods and services currently under \$50 would be subject to a cooling-off period preventing immediate use of goods and services; Dealers may be less willing to offer these types of goods and services door-to-door reducing the range and quality available to consumers; and The price of those goods and services formerly exempt from the provisions may increase due to increased compliance costs
Industry	<ul style="list-style-type: none"> Removes the difference between dealers who deal in contracts over \$50, and those that do not, thereby creating greater equity within the industry; and With all of the industry regulated by the same provisions, industry can potentially have an enhanced reputation amongst consumers. This may be an incentive for some new dealers to enter the market 	<ul style="list-style-type: none"> Compliance costs for those dealers who currently do not have compliance costs; Reduced incentive for dealers to deal in items which are currently under the prescribed amount, potentially leading to an increase in prices for those items and a resultant decreased consumer demand; and Deterrent for new dealers to enter a market which would be subject to increased compliance costs
Government	<ul style="list-style-type: none"> Creates a more equitable marketplace where all dealers are subject to the same regulations, which is consistent with the objectives of the Act; and Extends consumer protection aspects of door-to-door provisions to a wider group of consumers, which is consistent with the objectives of the Act to promote a more informed marketplace 	<ul style="list-style-type: none"> Increased costs in relation to administration and enforcement of the Act, as it would apply to more dealers; and Costs of amending the Act and educating the public about the change

Results of Consultation

In the Issues Paper phase, some industry stakeholders questioned the need for a prescribed amount in the contemporary marketplace, suggesting it was an outdated concept. The majority of stakeholders, however, supported retention of a prescribed amount. Primarily, this support was based on the notion that the prescribed amount gave contracts of small value an essentially “exempt” status under the Act, creating a benefit for dealers in these products. Legal Aid Queensland also suggested that the prescribed amount served to exempt charitable organisations from door-to-door provisions.

Conclusion

Repeal of the prescribed amount is inconsistent with the objectives of the Act, and also poses significant costs for all stakeholders, costs that, overall, outweigh any benefits the alternative possesses.

7.2.2 ALTERNATIVE 2: MODIFICATION OF PRESCRIBED AMOUNT

Under this alternative model, the prescribed amount would be increased. Some industry stakeholders have suggested raising the prescribed amount to \$500. In the recent review of the NSW Door-to-Door Act, stakeholders to that review suggested the introduction of a prescribed amount worth \$110. Other stakeholders suggested \$100, double the current amount.

\$500 is excessive as it is considered there would be few contracts worth more than \$500. This would result in few door-to-door contracts being subject to protection provisions such as a cooling-off period. \$100 represents a 100% increase to an amount that has remained static for over 13 years. Such an increase would have the potential to cause more confusion in the marketplace than a smaller increase. A median amount of \$75 would both reflect movements in general prices since 1989 and allow a small margin for price growth in the short to medium term.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> Increasing the prescribed amount to \$75 may result in a greater number and range of goods and services being available to consumers for immediate use; and In an effort to avoid door-to-door compliance costs, dealers who offer goods and services at prices slightly higher than \$75 may be encouraged to decrease prices to below \$75. This could result in lower prices for consumers 	<ul style="list-style-type: none"> Dealers of goods and services currently worth less than \$50 may seek to increase their prices to up to \$75; A larger number of goods and services will not be subject to door-to-door provisions, meaning that there will be an increased number of transactions in which consumers will not have the benefits of such door-to-door consumer protection mechanisms as a cooling-off period; and Depending on success of any public awareness/education campaign, alternative could result in consumer confusion about which contracts are or are not prescribed
Industry	<ul style="list-style-type: none"> Maintains current situation where dealers in smaller, less costly door-to-door items can avoid compliance costs which may otherwise be a significant burden compared to the size of their business; Reduced compliance costs for those dealers whose products would now fall under the prescribed amount but previously did not; Potential encouragement for new dealers to enter the market as there is a slightly higher threshold under which they can avoid door-to-door compliance costs; New prescribed amount is generally more reflective of prices of goods and services; and Potential to increase prices from below \$50 to just under \$75 while still avoiding door-to-door compliance costs 	<ul style="list-style-type: none"> Continues the distinction between dealers in goods under the prescribed amount and those above it; and Not a significant difference between \$50 and \$75, whereas a move to a prescribed amount of \$100 or more, for example, would have more significant impacts for industry
Government	<ul style="list-style-type: none"> Consistent with the objectives of the Act to have a competitive marketplace – more dealers may be encouraged to enter the marketplace with a higher prescribed amount, which may then enhance competition; and 	<ul style="list-style-type: none"> Inconsistent with objective of the Act to provide a more equitable marketplace, as the distinction between dealers in items below and above the prescribed amount is maintained; Costs of amending the legislation and

Stakeholders	Advantages	Disadvantages
	<ul style="list-style-type: none"> Continues to minimise red tape for dealers in smaller contracts, while also marginally increasing the number of dealers in smaller contracts who could benefit from minimised red tape 	<ul style="list-style-type: none"> educating the public about the change; and Inconsistent with other jurisdictions

Results of Consultation

In the first phase of consultation, there was no clear stakeholder sentiment on this issue. The Queensland Retail Traders and Shopkeepers Association submitted that the increase would remove red tape for smaller businesses without cost to consumers. In not supporting the alternative, Legal Aid Queensland submitted that an increase would have a negative impact on consumers on fixed incomes or benefits, and that these consumers should not have to complete contracts to simply to ensure the salesperson would leave the consumer’s residence. Input from the Office of Fair Trading indicated that in some parts of the State, there was an increase in the number of contracts worth less than \$50 being offered door-to-door in Queensland. In the second phase, Optus submitted that an increase to \$75 would not affect them as their contracts are generally for larger amounts. The Building Services Authority supported the proposal, as did the submission from the Gold Coast Office of Fair Trading.

Overall Assessment

The benefits of this alternative, particularly in benefits to industry, outweigh the costs to stakeholders. There is a benefit in maintaining a prescribed amount to offer relief to dealers in smaller value transactions from compliance with door-to-door provisions. In addition, the \$50 amount does not appear relevant to the contemporary marketplace.

7.3 CONCLUSIONS AND RECOMMENDATIONS

It is consistent with both the objectives of the Act, and with Government Priority Outcomes, to prescribe an amount for a door-to-door contract. There are benefits for consumers, industry and government in retention of the prescribed amount provisions. Moreover, there is a net benefit in modifying the prescribed amount from its current \$50 amount to \$75. In doing so the prescribed amount will more accurately reflect the price of goods and services offered in the door-to-door industry.

Recommendation: That the Act be amended to change the prescribed amount to \$75

8.0 DOOR-TO-DOOR TRADING – COOLING-OFF PERIOD

8.1 BACKGROUND

Section 61 of the Act prescribes a ten-day cooling-off period for prescribed contracts. The cooling-off provision provides a simple avenue to redress for consumers who have been coerced or harassed into purchasing products or services they neither need nor want. The cooling-off period also gives consumers a chance to comparison shop to determine if they have made a value-for-money purchase.

During the ten-day cooling-off period, a consumer can rescind the contract without penalty²⁸. Should a consumer rescind a prescribed contract, any related contracts made in connection with the door-to-door contract (such as a credit contract) are also void.²⁹ A consumer must exercise their rights under the cooling-off period by notifying the dealer in writing within the ten days.³⁰ A consumer's right to a cooling-off period cannot be waived.³¹

In other legislation, there is a three-day cooling-off period for contracts entered into under the *Introduction Agents Act 2001* (“the Introduction Agents Act”), and a five and one-day cooling-off period for residential property sales and vehicle sales respectively under the PAMD Act.

A significant number of the complaints about door-to-door trading made to the Office of Fair Trading are associated with the cooling-off period. These complaints generally focus on consumer misunderstanding about when the cooling-off period begins and ends, and the correct method for rescinding a contract during the cooling-off period.

Relevance to Objectives of the Act and Government Priority Outcomes

This restriction meets the objective of the Act to ensure a fair marketplace, as the cooling-off period can redress unfair trading practices by dealers. This includes misleading or harassing consumers into signing contracts for products they did not want nor need, or by misleading consumers about the nature of the product or service being offered for sale. This restriction also helps to meet the Government Priority Outcome of safer communities, by providing that consumers who have made hasty or pressured decisions can withdraw from the contract.

Other Jurisdictions

All jurisdictions have a ten-day cooling-off period for door-to-door contracts, except for New South Wales and Victoria. The NSW Door-to-Door Act has no cooling-off period, while the Victorian Act prescribes a five-day cooling-off period. Recently, however, the Victorian Act has been under review with one of the issues under consideration whether or not to increase the cooling-off period from five days to ten days, in line with the majority of other jurisdictions.

8.2 REGULATORY ALTERNATIVES

8.2.1 ALTERNATIVE 1: DEREGULATION

Under this alternative model, there would be no cooling-off period in the Act for door-to-door trading. Consumers who enter into a door-to-door contract and then wish to rescind the contract would have to

²⁸ Under section 66(1) of the Act, a contract may also be rescinded within six months if there are breaches by the dealer of provisions relating to harassment and coercion, trading hours and duties of dealers to identify themselves and state the purpose of their call

²⁹ Section 69 of the Act

³⁰ Section 67 of the Act

³¹ Section 70 of the Act

enter into negotiations with the dealer to be released from the contract, and/or seek legal advice on options to rescind the contract.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Immediate supply/delivery of goods; and • Without a cooling-off period to act as a safety net, consumers may, over time, be encouraged to exercise greater caution and discretion before entering into door-to-door contracts 	<ul style="list-style-type: none"> • No opportunity to comparison shop; • No opportunity to reconsider purchase, especially if purchase was made in response to high-pressure sales tactics; • Potential for traders to increase their use of high-pressure tactics in an effort to get more sales more immediately; • Reduced bargaining power, because payment needs to be made immediately; • Contract is legally binding – to rescind, consumer may have to pay a penalty and/or incur the expense of legal advice/action; and • Other related contracts such as a related credit contract will also have to be honoured³²
Industry	<ul style="list-style-type: none"> • Immediate payment for products and services; • If the product is a good product, positive consumer response may spread in the market by word of mouth more quickly than under a cooling-off period, creating flow-on benefits for the dealer and supplier; and • Salespeople can have “certain” sales and be sure of their sales and commissions, rather than having the possibility that their sales may be rescinded during a cooling-off period 	<ul style="list-style-type: none"> • Consumers may be less willing to enter into door-to-door contracts, which could impact negatively on demand; • Consumers may demand immediate delivery of product. This would be disadvantageous to dealers and suppliers who are unable, due to the nature of their product or service, to supply it immediately; and • Lack of cooling-off period could encourage unscrupulous dealers to engage in increased high-pressure tactics – this may lead to a worsening of the industry’s overall reputation, which could impact on demand
Government	<ul style="list-style-type: none"> • Reduction in the administrative burden (minor) 	<ul style="list-style-type: none"> • Costs of amending the Act and educating the public about the change • Inconsistent with objectives of the Act • Inconsistent with Government Priority Outcomes for safer communities

Results of Consultation:

All stakeholders in both phases of consultation supported the retention of a cooling-off period.

Overall Assessment:

There are minor benefits and major costs in this alternative, with no stakeholder support for progressing to this alternative. A cooling-off period is an essential feature of door-to-door transactions as it provides the opportunity for a consumer to obtain redress for a purchase made unadvisedly or under duress.

³² ASIC submission to the Issues Paper

8.2.2 ALTERNATIVE 2: MODIFICATION OF COOLING-OFF PERIOD

Under this alternative model the cooling-off period provision would be reduced from the current ten days to five days, comparable with the five-day cooling-off period under the PAMD Act.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> Maintains opportunity for consumers to rescind contract – the five business-days will still give consumers essentially a week in which to reconsider the contract and/or to comparison shop 	<ul style="list-style-type: none"> Less time in which to rescind contract – under current ten days, if rescission notice is not received by dealer, consumers have time to check this and then resend, which could not occur in just five days; Consumers in regional areas may have difficulty in availing themselves of the cooling-off period if trader resides in larger, urban areas long distances away; Less time to reconsider purchase and comparison shop; and Potential for some consumer confusion if awareness campaign about the change in cooling-off period does not reach the majority of the consumer audience
Industry	<ul style="list-style-type: none"> Not as long to wait for payment – deal can be finalised slightly more rapidly; Less waiting time to supply products and services. If positive consumer response is created by the products or services, this can spread more quickly under a reduced cooling-off period scenario; For dealers who regularly go to regional or rural areas, this alternative means less time to wait. Dealers may be more likely to remain in the area, rather than leaving then coming back in ten days time; and In addition there may be some incentive for dealers to go to regional areas more often 	<ul style="list-style-type: none"> Consumers may be more cautious in their purchases if they have less cooling-off period to use. This could then affect demand
Government	<ul style="list-style-type: none"> Reduction in administrative burden (minor) This alternative could encourage dealers to travel to more areas and create more sales opportunities for those dealers. This may then indirectly help to achieve the Government Priority Outcome of more jobs, and building Queensland's regions. 	<ul style="list-style-type: none"> Reducing amount of cooling-off period is not entirely consistent with objective of door-to-door provisions, which is to give consumers the opportunity to reconsider contracts made door-to-door Cost of amending legislation and educating the public about the change

Other Issues: There are significant differences between a cooling-off period for door-to-door sales, and cooling-off periods under both the PAMD Act and the Introduction Agents Act. Primarily, the nature of a door-to-door contract is that the initial approach is unsolicited, while contracts under both the PAMD Act and the Introduction Agents Act would not often be as a result of unsolicited approaches. In most cases, consumers would actively seek out goods and services such as introduction agency and real estate services based upon their actual demand for such services. In the case of real estate in particular, consumers are, because of the high dollar values involved, more likely to comparison shop and conduct their own research before making a decision to engage a real estate agent. By contrast, door-to-door sales rely upon the element of surprise by bringing to a consumer's attention a product or service that they did

not have an immediate need for and for which the consumer has not had the opportunity to comparison-shop.

Results of Consultation:

In the first phase, most stakeholders supported the option to reduce the cooling-off period from ten to five days. Both Optus and the Direct Selling Association of Australia, submitted that five days was appropriate given that this was the length of cooling-off periods used for residential property transactions. The Queensland Retail Traders and Shopkeepers Association also endorsed a five-day cooling-off period. The Australian Direct Marketing Association submitted that ten days is excessive but that consistency between jurisdictions was a bigger issue. Stakeholders against this alternative included Legal Aid Queensland, which suggested there would be consumer confusion if the cooling-off period were reduced from ten to five days. They also submitted that isolated communities might suffer if the time for cooling-off was reduced.

In the second phase, Optus again endorsed the proposal to have a five day cooling-off period, while the Gold Coast Office of Fair Trading submitted that the reduction would cause marketplace confusion and would disadvantage consumers. Legal Aid Queensland expressed strong objections to a five-day cooling off period. They submitted that the five-day period may not be enough time for consumers, particularly vulnerable consumers such as the elderly or people from a non-English speaking background, to seek appropriate advice (such as that provided by Legal Aid) and rescind the contract. Legal Aid Queensland also submit that there are no benefits to regional Queensland in this alternative, and that in the case of Victoria, a five-day period is appropriate as it does not have the same level of geographic isolation that Queensland has, due to its size.

8.3 CONCLUSIONS AND RECOMMENDATIONS

The nature of door-to-door sales, based upon an element of surprise and the limitation on a consumer's ability to comparison shop, requires a longer rather than shorter cooling-off period in which consumers can undertake their own research about the product or service they have purchased or are considering purchasing. The objectives of the Act would be most effectively met by having a longer cooling-off period. The benefits to dealers of a shortened cooling-off period would not outweigh the costs to consumers of having less time in which to reconsider their purchases. In addition, there would be a significant cost for government in educating the marketplace about the change in the cooling-off period. These costs combine to render the alternative to reduce the cooling-off period an unsuitable alternative to the current provision.

Recommendation: That the current door-to-door cooling-off period of ten days be retained

9.0 DOOR-TO-DOOR TRADING: NO PAYMENT OR SUPPLY DURING COOLING-OFF PERIOD

9.1 BACKGROUND

Section 62 of the Act prohibits suppliers or dealers from accepting any money or other consideration, or from supplying services, during the cooling-off period. This restriction also extends to any related contract (such as a credit contract) made with the prescribed door-to-door contract. In the event that any payment is given during the cooling-off period, section 68(1)(a) provides that a refund is to be given if the contract is rescinded during the cooling-off period.

This restriction ensures consumers retain bargaining power by placing a moratorium on payment until the cooling-off period is over. A consumer who does pay during the cooling-off period may feel compelled to continue with that purchase even if the contract is not in their best interests, because they have already paid some money.

Breaches of this restriction form the majority of all door-to-door complaints to the Office of Fair Trading. This may be because contemporary door-to-door trading focuses on products and services such as mobile phones that have immediate use in the home. This could place pressure on a dealer to provide such products and services immediately but in breach of the restriction.

Relevance to the Objectives of the Act and Government Priority Outcomes

This restriction meets the objective of a fair marketplace, as it ensures consumers will not be ripped-off by unscrupulous dealers who take payment then abscond without providing product or services to the consumer. This is also consistent with the Government Priority Outcome of safer communities. This restriction also helps the marketplace to be more informed, as consumers will have more bargaining power during the cooling-off period if they have not already paid for products and services.

Other Jurisdictions

There is a similar provision in all other jurisdictions' Fair Trading Acts. The only slight variation is section 80 of the Victorian Act which specifies that a consumer is not required to pay for any services provided during the cooling-off period under either a contact (door-to-door approach) or non-contact (approach by telephone, facsimile or email) sales agreement.

9.2 REGULATORY ALTERNATIVE: DEREGULATION

Under this alternative model, section 62 of the Act would be repealed to allow payment to be accepted and services to be provided during the cooling-off period. However, section 68 (1) of the Act would still apply. Section 68(1) provides that any money a consumer has paid is to be refunded, in the event a consumer rescinds their door-to-door contract in the correct fashion within the cooling-off period.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Immediate payment can mean immediate delivery and use of goods; • No delay on installation, particularly advantageous if goods are needed urgently (such as burglar alarms and security systems), although this could 	<ul style="list-style-type: none"> • Increased risk of high-pressure sales tactics from traders in order for them to effect an immediate sale; • Costs of returning goods if contract rescinded; • Costs of repairs and rectification work if

	<p>also have disadvantages (see opposite); and</p>	<p>renovations were made to install goods;</p> <ul style="list-style-type: none"> • Consumer may feel obligated to complete the contract if they have paid a deposit, even if they don't really want the goods; • Risk of trader absconding with money but without providing goods; and • May encourage dealers in products such as burglar alarms to misrepresent the need for such a product by exaggerating crime statistics.
Industry	<ul style="list-style-type: none"> • Dealers and salespeople do not have to return after the cooling-off period to deliver goods and/or receive payment; • Goods can get into the marketplace more quickly creating consumer good will; • Beneficial for traders in regional/rural areas, as they will not have to travel long distances to receive payment and supply goods. This may also be an incentive for more traders to go to these areas; and • Removes inequity between dealers, and other traders/retailers who can be paid and supply goods immediately 	<ul style="list-style-type: none"> • Cost of retrieving goods if consumer rescinds contract; • Cost of processing a refund if consumer rescinds contract but has already paid; and • Risk of damage to goods during cooling-off period which then are difficult to resell if consumer rescinds contract
Government	<ul style="list-style-type: none"> • Reduction in regulatory burden (minor); • Reduced administrative costs under the Act – significant given that this issue is the leading type of door-to-door complaint received by the Office of Fair Trading; and • Consistent with the objective of the Act to have an equitable marketplace – dealers can receive payment and deliver goods in the same manner that other traders/retailers can 	<ul style="list-style-type: none"> • Inconsistent with the objective of the Act to have a safe and informed marketplace; • Inconsistent with Government Priority Outcome of safer and more supportive communities; and • Costs of amending the Act and educating the public about the change

Results of Consultation:

In the first phase, there was relatively even support for and against this alternative. The Australian Direct Marketing Association submits that the cooling-off period can be seen as a trial period, and it is in consumers' best interest to have the goods during the cooling-off period so that consumers can test the product. The prevailing view of industry stakeholders is that this restriction causes delays in supply of the goods at a time where many of these goods have immediate use in the home. In not supporting this alternative, Legal Aid Queensland submits that consumers may think they are unable to withdraw from the contract if they have paid the dealer. In addition, it may be hard to justify not paying a dealer if the dealer has already provided services (such as installation) during the cooling-off period. Some stakeholders also highlighted the costs of returning goods to the dealer if the contract is rescinded as an argument against this alternative.

In the second phase, the Australian Direct Marketing Association submitted that there are a range of products and services which, by their nature, could be suited by this alternative. Such products include goods made to order or personalized, hygiene or other personal health products, and goods that can easily be copied (such as compact discs or computer software). The Australian Direct Marketing Association submits that these, and other products and services, are being supplied in a marketplace where consumers are increasingly expecting immediate supply, and thus some consideration should be given to exempting a number of products/services from the prohibition on payment during cooling-off.

9.3 CONCLUSIONS AND RECOMMENDATIONS

While industry (and arguably consumers in some circumstances) may benefit from this alternative, it is considered that the costs of this alternative outweigh any benefits. The alternative is not consistent with the objectives of the Act and could jeopardise consumers' bargaining power in the door-to-door process. In providing payment during the cooling-off period, it is considered that consumers may feel they have committed to a contract and may feel compelled to proceed further. This is particularly the case if consumers are not well informed about their rights under the door-to-door provisions.

The recommendation by the Australia Direct Marketing Association that a number of specific products and services could be exempt from this provision of the Act is a recommendation that could be given further consideration by the Office of Fair Trading.

Recommendation: That the:

- ***Prohibition in the Act on dealers accepting payment or supplying goods or services during the cooling-off period for prescribed door-to-door contracts be retained; and***
- ***Office of Fair Trading further examine the proposal that certain goods and services, by their very nature, should not be subject to this provision***

10.0 DOOR-TO-DOOR TRADING – TRADING HOURS

10.1 BACKGROUND

Section 63 of the Act restricts door-to-door trading to the following times:

- Weekdays: 9am to 6pm;
- Saturdays: 9am to 5pm; and
- Sundays and public holidays: prohibited³³

It should be noted, however, that Section 63 of the Act provides these are the hours in which a dealer “shall not call on a person” for the purposes of negotiating a door-to-door contract. “Call on” refers to a physical approach. For example, a dealer or salesperson knocking on a consumer’s door, or approaching a consumer in a shopping centre. Telephone approaches are not regulated by these trading hours as telemarketing is not considered as “calling on” a consumer. Telemarketing hours are regulated by codes of practice in some cases. For example, the ADMA Code sets a telemarketing trading hour limit of 9pm on weekdays.

Trading hours are prescribed in an effort to protect consumers’ privacy and ensure they are not being called upon at extremes of the day or night. Until 2000, dealers were permitted to trade until 8pm on weeknights, but in 2000, the Act was amended to reduce the limit to 6pm. At the time, the then Minister for Fair Trading cited both the concerns of elderly residents, who felt vulnerable being door-knocked after dark³⁴, as well as concerns for the safety of school leavers who are often employed as door-to-door salespeople and who were knocking on doors late at night³⁵.

Safety issues are prominent in considering door-to-door trading hours. For example, the murder of a child who was selling items door-to-door on behalf of their school has led to a proposal in some American states to significantly restrict, if not prohibit, door-to-door trading hours and practices.³⁶ This unfortunate example could translate to Queensland, and it would be reasonable to assume that, depending upon the suburb, geographical area or time of day, salespeople may be at risk during the course of door-to-door trading. The risk is increased if salespeople are alone. While some larger dealers have a policy of salespeople working in pairs or in teams to overcome safety risks³⁷, this may not be an option for smaller dealers.

In terms of trading hours generally, the Queensland Government has announced plans to create a Sunday trading zone in South-East Queensland. In legislation to take effect by August 2002, retailers will have the choice of opening between 9am and 6pm on Sundays (and public holidays, but excluding Good Friday, Easter Sunday, ANZAC Day, Labour Day and Christmas Day public holidays).³⁸ The proposed new Sunday retail trading hours are in addition to extended Sunday trading hours that apply in certain declared tourism zones, which retailers have in some cases had since 1988 in areas including the Gold and Sunshine Coasts, Cairns, Townsville and the Whitsundays.³⁹

The trend towards more relaxed trading hours described above may lead to consumers being more accepting of shopping on a Sunday, and perhaps accepting of Sunday door-to-door trading. On the other

³³ Section 63 of the Act does allow for these hours to be varied, if arranged by prior appointment

³⁴ *Hansard*, 21 June 2000, p.1789

³⁵ *ibid*, p.1790

³⁶ “Door-to-door ban might not need law”, *The Record* (New Jersey), 14 November 2000

³⁷ Cable and Wireless Optus submission to the Issues Paper

³⁸ “Beattie Unveils Sunday Trading Zone”, Ministerial Media Release, 18 February 2002

³⁹ *ibid*

hand, the issue of Sunday trading is complicated by notions that Sunday is a day of rest, a day held sacred due to religious beliefs, or that it may be a family's primary opportunity to spend time together.

The Office of Fair Trading has received few complaints in recent times about alleged breaches of trading hour restrictions by dealers. This would suggest that there is a high compliance rate with this provision, and that the restriction is helping to meet the objectives of the Act. A number of submissions made in response to the Issues Paper, however, indicated that some dealers are dissatisfied with the trading hour limits and the impost that such a restriction places on a dealer's ability to freely run their business.

Dealers have reported that they experienced marked decline in their turnover immediately following the enactment of the 2000 amendment to trading hours. This was because the period of 6pm to 8pm on weekdays is seen to be the best time in which to do business, because it is generally the time when it is most likely to have both partners at home at the same time. In response to these concerns, the Office of Fair Trading utilised the exemption provisions under section 71A of the Act to consider applications from dealers to trade up to 8pm on weekdays. Dealers who have been granted such an exemption have submitted that they then experienced a restoration of their turnover to pre-2000 levels.

Relevance to Objectives of the Act and Government Priority Outcomes

This restriction meets the objectives of the Act by addressing safety concerns of consumers and salespeople. Restricted trading hours also help to ensure that consumers are not contacted late at night or in the early hours when their mental faculties are not at their best and their susceptibility to high-pressure sales tactics could be at its highest, achieving the objective of a fair marketplace.

In addition, the 2000 amendment has in effect expanded the objectives of the door-to-door provisions of the Act to include protecting consumers' privacy, by protecting the traditional family/mealtime period of 6 to 8pm.

Other Jurisdictions

There are no trading hour restrictions in either the NSW Door-to-Door Act or the Victorian Act. However it is understood that the NCP review of the NSW Door-to-Door Act is considering the issue of prescribed trading hours. In all other States and Territories the upper limit on weekday trading hours is 8pm. Sunday and public holiday trading is prohibited in all jurisdictions except for the Australian Capital Territory, which allows trading from 9am to 5pm on Sundays and on public holidays except for Good Friday, Easter Sunday and Christmas Day.

10.2 REGULATORY ALTERNATIVES

10.2.1 ALTERNATIVE 1: DEREGULATION

Under this alternative model there would be no trading hour restrictions in the Act. The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> Can receive offers for goods at any time – particularly beneficial for consumers who, due to their hours of work and other commitments, are not at home or not available during current trading hour limits 	<ul style="list-style-type: none"> Diminished personal privacy; Intrusion into times generally regarded as family or personal time; Safety concerns of the elderly and those living alone; and Deregulation may lead to increase in door-to-door, which could result in consumers becoming so saturated with offers that may

		be less judicious in entering into contracts
Industry	<ul style="list-style-type: none"> • More time in which to operate; • Ability to reach a wider section of the market; • More flexible trading arrangements; • Incentive for new players to enter the market; and • Could result in increased need for salespeople, improving employment prospects 	<ul style="list-style-type: none"> • Consumers' negative reaction to intrusion into their personal time may have a negative impact on demand; • This negative reaction may also mean traders would rarely, if ever, trade much later beyond the current hours, resulting in a "no change" situation; • Safety risks for salespeople trading later at night (or earlier in the morning) – this was cited as a major reason for amending the hours in 2000⁴⁰; and • Increased costs for employing salespeople later or earlier in the day, and/or for employing salespeople on weekends and holidays
Government	<ul style="list-style-type: none"> • Reduction in the regulatory burden (significant); • Encourages greater business flexibility which in turn can encourage employment, which is consistent with Government Priority Outcome of more jobs; and • Reduced administrative costs associated with the Act 	<ul style="list-style-type: none"> • Inconsistent with the objectives of the Act for a safe marketplace; • Inconsistent with the Government Priority Outcome of safer and more supportive communities; and • Inconsistent with other jurisdictions • Costs of amending legislation and educating the public about the change

Results of Consultation:

In the first phase of consultation, a large majority of stakeholders did not support this alternative. Most considered it too intrusive on consumers' personal lives to deregulate trading hours, and supported the retention of limits on trading hours. A small number of industry stakeholders did support this alternative. They considered it unfair to restrict door-to-door dealers to certain trading hours while some retailers were not restricted or had significantly less restrictive trading hours. In the second phase, Optus and the Australian Direct Marketing Association supported regulation of trading hours though Optus did so with a proviso of still being able to apply for exemption (see section 12.0).

Overall Assessment:

This alternative does not meet the objectives of the Act, as the alternative does not allay safety concerns and reduces the fairness of door-to-door negotiations for consumers. The Government Priority Objective of safer communities is also not met by this alternative.

10.2.2 ALTERNATIVE 2: MODIFICATION OF TRADING HOURS

Under this alternative model, the Act would be amended to increase allowable door-to-door trading hours to the hours of trade prior to the 2000 amendment. Accordingly, dealers would be allowed to trade 9am-8pm weekdays and 9am-5pm Saturdays, with Sundays and public holidays still prohibited.

The following table outlines the likely impacts of moving to this alternative:

⁴⁰ *Hansard*, 21 June 2000, p.1790

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> Minimal change to current situation, at least during weekdays; As the amendment was only two years ago, this alternative will see a return to a situation that will still be familiar to some consumers; Regulation of hours remains, ensuring some degree of consumer privacy; and Relaxed trading hours may encourage more competition in the marketplace which may result in lower prices and better service for consumers, and/or an expansion in the types of goods and services offered door-to-door 	<ul style="list-style-type: none"> The hours from 6pm to 8pm are traditionally family hours involved with meal, bath or bed times⁴¹ – this alternative would impact on this time; Safety concerns – concerns are based upon the approach of a stranger (dealer or salesperson) after dark and unannounced. Such safety concerns are heightened for the elderly and those living alone; and Increased intrusion on privacy
Industry	<ul style="list-style-type: none"> Increased opportunity to call upon a broader/larger pool of potential consumers, and therefore potential to make more sales; Opportunity to access that section of the market that is currently cut-off from traders; Benefits for salespeople working on commission – this gives them more time to get sales, and places them on a more equitable footing to their interstate colleagues who are not as restricted by trading hours⁴²; and Puts dealers on a more equal footing with other businesses, who are not as restricted in their hours of trade 	<ul style="list-style-type: none"> Negative consumer response to increased trading hours may impact on demand; Increased operating costs: for example, overtime and extra security for working at night; and Potential safety concerns for salespeople may increase if salespeople are trading later into the evening
Government	<ul style="list-style-type: none"> Minor reduction in the administrative burden; Consistency with interstate legislation; Encourages businesses by giving them option of increased hours to in which to trade – consistent with Government Priority Outcome of more jobs; and Consistent with recent Queensland Government decision to have increased retail trading hours 	<ul style="list-style-type: none"> Inconsistent with amendment to trading hours in 2000; Inconsistent with the objective of this provision to protect consumers' privacy; Inconsistent with Government Priority Outcome of safer communities, due to increased potential safety risks for both consumers being approached later at night, and salespeople who are selling later at night; and Cost of amending legislation and educating the public about the change

Results of Consultation:

In the first phase of consultation, there was strong industry support for the alternative, with stakeholders such as Cable and Wireless Optus and A Better Chance Pty Ltd submitting that 6-8pm on a weekday was their key trading period. For instance, prior to 6pm parents and caregivers can be occupied with after-school activities, and/or many people work from 9am to 6pm. Some non-industry stakeholders saw this alternative as having benefits for consumers by being consistent with more flexible retail trading hours. In calling for increased trading hours, industry stakeholders did not supply evidence to suggest that there was a significant and untapped market for their door-to-door trading beyond the current prescribed hours.

⁴¹ Office of Fair Trading Compliance Division submission to the Issues Paper

⁴² *ibid*

Overall, a large majority of stakeholders were against this alternative. Most expressed concerns about privacy intrusions and intrusions onto family time in particular. Safety concerns for older consumers and consumers living alone were also raised. The Queensland Retail Traders and Shopkeepers Association submitted that door-to-door trading hours were linked to crime protection and that as such, current limits should remain. Legal Aid Queensland submitted that Sundays have a spiritual meaning to many consumers and should remain free of door-to-door trading.

In the second phase of consultation, the Australian Direct Marketing Association agreed with the current restricted hours but submitted that the hours in the Act did not necessarily apply to telemarketing approaches. Optus submitted that the current hours were acceptable provided they and other dealers were still apply to have an exemption from the Act to trade up until 8pm.

Overall Assessment:

This alternative is consistent with the Government Priority Outcome of more jobs, because it gives dealers more hours in which to trade, leading to the possibility that they will employ more staff to cover additional hours of trade. However the alternative is inconsistent with the objective of the Act to protect consumers' privacy, as the increases the time in which dealers can intrude on consumers' private time. It is also inconsistent with the objective of the Act to ensure a safe marketplace, as the increased hours of trade can result in increased safety concerns for both consumers and salespeople.

10.3 CONCLUSIONS AND RECOMMENDATIONS

Ultimately, there is no evidence to suggest a demand for greater hours of door-to-door trade. Moreover, the safety concerns of consumers and salespeople would outweigh the potential commercial benefits for dealers of extra trade. It is more consistent with the objectives of the Act, and with Government Priority Outcomes, to retain current trading hour restrictions than to move to the alternatives of deregulation or modification of hours.

Recommendation: That the restriction in the Act on door-to-door trading hours be retained

11.0 DOOR-TO-DOOR TRADING – PURPOSE OF CALL AND IDENTIFICATION

11.1 BACKGROUND

Section 64 of the Act requires dealers and their salespeople to state the purpose of their call and to show an identity card that displays the dealer’s name and address⁴³. If the dealer is not the supplier, the supplier’s full name and address must also be provided.

This provision serves a number of purposes, outlined below:

- Enabling consumers to identify a dealer or salesperson is necessary should the consumer need to contact the dealer for after sales service or a complaint. In addition, if the dealer or salesperson harasses the consumer or commits an offence such as theft or assault, a consumer will be able to identify the dealer to the Office of Fair Trading in the former case, and to police in the latter;
- Requiring a dealer to properly identify the purpose of their call to the consumer is necessary as it helps consumers know the call is an attempt to have the consumer buy something, rather than some other purpose (such as a survey or charitable collection) for which the consumer may be more likely to open their door. Anecdotal evidence also suggests that promoters of illegal pyramid schemes have called upon consumers and falsely represented that they are door-to-door dealers to gain entry to the consumer’s residence and promote their illegal scheme⁴⁴; and
- The restriction helps dealers distinguish themselves from one another, and in doing so, helps to prevent unscrupulous dealers passing themselves off as another dealer.

Overall, the restriction aims to work proactively, and is designed to allow consumers a chance to ‘vet’ someone that calls upon them and claims to be a door-to-door dealer or salesperson before that dealer enters their residence. The Office of Fair Trading receives very few complaints in relation to this issue.

Relevance to the Objectives of the Act and Government Priority Outcomes

This restriction helps achieve the objective of an informed marketplace by giving consumers information to assist in identifying dealers. It also provides consumers with information about the “true” purpose of the call. As such, it is consistent with the Government Priority Outcome of safer and more supportive communities.

Other Jurisdictions

All jurisdictions have a similar provision in their legislation requiring dealers to disclose the true nature of their call, and to identify themselves.

11.2 REGULATORY ALTERNATIVE: DEREGULATION

Under this alternative model, section 64(2) of the Act would be repealed, and consumers would have to rely upon dealers to voluntarily identify themselves and the purpose of their call. The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • To create goodwill in the marketplace, dealers would likely voluntarily identify 	<ul style="list-style-type: none"> • Unable to identify dealers; • Difficulty for consumers in tracking down

⁴³ “Identity card” is not defined in the Act

⁴⁴ Office of Fair Trading Compliance Division submission to the Issues Paper

	<p>themselves (though not necessarily the purpose of their call)</p>	<p>traders if after-sales service, refund, exchange or repair is needed; and</p> <ul style="list-style-type: none"> • Can be misled about the purpose of call of a trader
Industry	<ul style="list-style-type: none"> • Minor reduction in compliance costs, particularly if trader is currently producing custom identification cards for its salespeople 	<ul style="list-style-type: none"> • Increased risk of unscrupulous traders passing themselves off as other traders due to lack of identification, and difficulty in tracking them down; • Negative consumer perceptions of industry due to this alternative could have negative impact on business turnover; and • Unscrupulous traders using this alternative as a “cover” would have a negative effect on the reputation of the industry as a whole
Government	<ul style="list-style-type: none"> • Minor reduction in administrative costs 	<ul style="list-style-type: none"> • Inconsistent with the objective of the Act to ensure an informed marketplace – consumers could be misled if dealers do not disclose the true nature of their call; • Inconsistent with the Government Priority Outcome of safer and more supportive communities; and • Costs in amending the Act and educating the public about the change

Results of Consultation:

In the first phase of consultation, a large majority of stakeholder responses to this restriction were in favour of its retention, stating that it was a vital part of the consumer protection mechanisms of the Act. Legal Aid Queensland stated that the restriction was vital in ensuring that consumers were aware they were entering into contracts. It was submitted by the Australian Direct Marketing Association that the use of the term “call” in this context could be misleading in that it may suggest only telephone calls are included, and that the term “visit” could replace “call” in this provision. It is considered that while this suggestion does not relate to the competition issues considered in this report, it is an issue that could be considered further by the Office of Fair Trading (see Section 17.3 of this report).

There was some qualified support from industry stakeholders for repeal of this provision. It was suggested by the Direct Selling Association of Australia that corporate identification such as order forms, brochures and price lists are sufficient to identify a dealer without an identity card as well.

In the second phase of consultation the only submission on this provision came from the Gold Coast Office of Fair Trading, which supported retention of the provision.

11.3 CONCLUSIONS AND RECOMMENDATIONS

While voluntary identification by dealers is considered likely, as it creates marketplace goodwill, there is no guarantee of all dealers complying. Moreover there is no guarantee that dealers would voluntarily disclose the nature of their call, particularly unscrupulous dealers who may use the pretext of door-to-door trading as a cover for them to promote or engage in illegal acts. Use of items such as brochures and receipts as identification is only useful when a consumer agrees to listen to an offer and/or agrees to a sale. The alternative does not meet the objectives of the Act, nor is it consistent with Government Priority Outcomes. There is little stakeholder support for this alternative.

Recommendation: That the requirement in the Act for dealers to state the purpose of their call and produce an identity card be retained

12.0 DOOR-TO-DOOR TRADING - EXEMPTIONS

12.1 BACKGROUND

Exemptions were introduced in 1997 as part of the Government's systematic review of business regulations. Feedback by dealers during the review process led to the inclusion of certain door-to-door exemptions. When the original Door to Door Act was introduced in the 1960s, it specifically prescribed the goods to which door-to-door provisions applied. The 1997 amendments simplified this approach by defining a prescribed contract and creating two categories of exemption, as described below:

Exemptions applied for under section 71A

The Act provides, under section 71A, that a dealer can apply for an exemption from any or all of the door-to-door provisions of the Act. Currently, exemptions under section 71A are mainly being used by dealers to allow them to trade up until 8pm on weeknights. The process of obtaining this exemption requires the dealer to demonstrate compliance with the following criteria:

- Affiliation with a code of conduct approved by the chief executive;
- Ensuring that all salespersons receive training prior to them commencing selling. Such training must be ongoing and subject to regular review; and
- Notifying, with at least one week's notice, affected consumers of the intent to trade up to 8pm. The notification is through an advertisement in a local newspaper or by a mailout, and must state the period during which the extended selling will be conducted.

Section 71A also provides that the chief executive must, before granting the exemption, be satisfied that the rights of consumers will not be adversely affected by the exemption. Six companies, which represent ten door-to-door dealers, currently have exemptions under section 71A of the Act. These traders are from a mix of industries, predominantly supply of cable television and mobile phones. During consultation some of these companies submitted that successful application for exemption had been essential in the running of their business, while others submitted the exemption process was cumbersome. No applications for exemption have been refused.

Exempt goods and services

Under section 60(3) of the Act, contracts solely for credit and insurance are exempt from door-to-door provisions. These two types of contracts are excluded because:

- Section 146(1) of the *Consumer Credit Code* prohibits door-to-door "selling" of credit; and
- Section 992A of the *Financial Services Reform Act 2001 (Commonwealth)* prohibits the unsolicited sale of "financial products" (a term that includes insurance).

In addition, under section 58A(1) of the Act, contracts for the provision of emergency repairs in the aftermath of a major natural incident⁴⁵ are also exempt from door-to-door provisions. The inclusion of emergency repairs as an exempt contract came about due to the recognition that in an emergency situation, it is not practical to expect a dealer to apply for exemption from door-to-door provisions and the repairs are needed immediately⁴⁶. The practice of offering emergency repairs door-to-door is still

⁴⁵ "Major incident" is defined in section 58A(2) as meaning an accident, earthquake, fire, flood, storm or similar event

⁴⁶ Clause 26, Explanatory Notes, *Fair Trading Amendment Act 1997*

prevalent in the marketplace⁴⁷, and is always likely to be prevalent as major incidents are largely unpreventable, and repairs in the aftermath of such incidents are needed urgently.

Relevance to the Objectives of the Act and Government Priority Outcomes

The objectives of the Act are met in that competition in the marketplace is improved if dealers can successfully apply to trade longer hours. By trading two extra hours, dealers can more equitably compete with retailers who already have flexible trading hours. At the same time, the objective of informing consumers is met, because the Act requires exempt dealers to inform consumers in advance of their intent to trade up to 8pm. The Government Priority Outcome of more jobs is met because the extra hours are an encouragement for dealers to employ more staff.

In the case of exempting emergency repairs, it is in consumers' best interests to have immediate access to emergency repairs. This meets the objective of the Act to have a safe marketplace, and the Government Priority Outcome of safer and more supportive communities, as it assists potentially hazardous damage to be speedily repaired and ensures consumers' homes are fit for habitation. However, this exemption does not meet the objectives of the Act to have an informed marketplace, as providers of emergency repairs are not obliged to provide the same type and amount of information to consumers as other dealers are. For example, emergency repair providers do not have to comply with door-to-door contractual requirements, a requirement that is designed to inform consumers of their rights in a door-to-door transaction.

Other Jurisdictions

The Victorian Act exempts domestic building, motor vehicle sales, land sales, and mortgage contracts. In the Australian Capital Territory, the *Door to Door Trading Act 1991* excludes contracts for the supply of goods and services by a charitable organisation. The NSW Door-to-Door Act excludes a number of types of contract from door-to-door provisions, including hire-purchase agreements and agreements for which negotiations were conducted entirely by mail. Insurance and credit contracts are excluded from the provisions of all States and Territories' door-to-door legislation. Except for the exemption in the Victorian Act for domestic building contracts, there is no provision in other jurisdictions for the exemption of emergency repair contracts from door-to-door provisions.

12.2 REGULATORY ALTERNATIVES

In both the following alternatives, insurance and credit contracts will continue to be exempt as they are regulated by other specific legislation.

12.2.1 ALTERNATIVE 1: REPEAL OF EXEMPTION PROVISIONS UNDER SECTION 71A

Under this alternative model, section 71A of the Act would be repealed, leaving no option for dealers to be exempt from any door-to-door provisions. Section 71B, requiring the Office of Fair Trading to maintain a register of exemptions, would also be repealed. There would be no change to exemptions in relation to emergency repairs, insurance and credit contracts.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> Ensures consumers will be protected by all door-to-door provisions of the Act; 	<ul style="list-style-type: none"> May reduce number of traders offering door to door sales leading to reduced choice for

⁴⁷ "Itinerant Shonks Blow Into Town During Cyclone Season", Building Services Authority Queensland media release, 7 January 2002

Stakeholders	Advantages	Disadvantages
	<ul style="list-style-type: none"> • Less chance for consumer confusion about which dealers are exempt; and • Won't be called upon beyond the current 6pm deadline – decreased privacy intrusion 	<ul style="list-style-type: none"> • consumers who like to purchase door to door
Industry	<ul style="list-style-type: none"> • Removes inequity that exists between exempt and non-exempt dealers particularly if smaller dealers cannot meet the exemption criteria; • Removes the expense and time involved in obtaining exemptions; and • No exempt dealers will mean reduced consumer confusion about which dealers are and are not exempt, which could have positive effects for industry as a whole 	<ul style="list-style-type: none"> • Restricts business flexibility; • Can no longer trade beyond 6pm and thus reach more potential customers; and • Inconsistency with operations in other jurisdictions if exemptions are granted in those other jurisdictions, but not in Queensland
Government	<ul style="list-style-type: none"> • Consistent with objectives of the Act to ensure an equitable and competitive marketplace, as it removes a current inequity between exempt and non-exempt dealers; • Also consistent with objectives of the Act in that it ensures that all dealers will comply with door-to-door provisions, lessening the chances of consumer confusion and creating a more informed marketplace; and • Minor cost saving in no longer having to process exemption applications and/or ensure compliance with exemption criteria 	<ul style="list-style-type: none"> • No flexible trading environment, discourages dealers from entering market and thus does not meet Government Priority Outcome of more jobs; • Inconsistent with objective of the Act to have a competitive marketplace, as exemptions can lead to an increase in overall competition; and • Minor cost of amending legislation and educating the public about the change

Results of Consultation:

There were mixed views on this alternative in the first phase of consultation. In supporting the alternative, stakeholders such as Legal Aid Queensland submitted that only extraordinary circumstances should be considered for exemption. It was submitted by the New South Wales Department of Fair Trading that a difficulty with exemption is that if the exempt dealer resigns from a code of conduct that was a condition of exemption, this may leave consumers without a safety net. Industry stakeholders were against this alternative and supported retention of the exemption provision. A Better Chance Pty Ltd submitted that they would likely cease trading in Queensland should they lose their ability to be exempt from trading hour requirements. In the second phase of consultation, Optus supported the exemption provision but the Gold Coast Office of Fair Trading submitted that the provision could be applied differently. A proposal was made to exempt charitable organisations. Moreover, it was submitted that if the 6pm limit is set on the basis that it ensures a safe marketplace, then any exemption granted for dealers to trade up to 8pm would be contrary to the objectives of the Act. In addition, it was submitted that if large numbers of exemptions are granted, over time the upper limit of trading hours will “de facto” become 8pm anyway, and that dealers could argue that with so many exemptions, the Act should be amended to change the limit to 8pm.

Overall Assessment:

The costs of this alternative outweigh its benefits. It is appropriate to maintain an exemption mechanism under the Act as it provides business flexibility while ensuring that the objectives of the Act for a competitive market continue to be met.

12.2.2 ALTERNATIVE 2: EXTENSION OF SOME DOOR-TO-DOOR PROVISIONS TO CONTRACTS FOR EMERGENCY REPAIRS

Under this alternative model, contracts to supply goods or services for emergency repair would be subject to some door-to-door provisions of the Act. Contracts for insurance and credit, because they are regulated elsewhere, would continue to be exempt under the Act.

It is not appropriate for emergency repair contracts to be subject to a cooling-off period under this model. This is because the nature of emergency repairs demands that they are done urgently, and a cooling-off period would prevent this happening. Section 61(1)(f) of the Act provides that a prescribed door-to-door contract must contain the statement ‘THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF 10 DAYS’ printed in upper case in type not smaller than 18-point. Under this alternative model, this statement would need to be excluded from any emergency repair contract, as a cooling-off period would not apply.

Trading hour restrictions should also not apply under this alternative because the nature of emergency repairs means that consumers require repairs at any time of day. Therefore, under this alternative model, the door-to-door provisions that could apply to emergency repair contracts would be:

- Section 61, which requires a dealer to provide a prescribed contract (excluding section 61(1)(f)) – the prescribed contracts sets out essential details such as contractual terms and total to be paid, and how it is to be paid⁴⁸;
- Section 64, which requires dealers to produce identification and state the purpose of their call; and
- Section 65, which prohibits harassment and coercion of a consumer by a dealer.

Other Considerations: Under this alternative model there may be impacts for licensed builders, who would be providing emergency repairs door-to-door. The *Queensland Building Services Authority Act 1991* (“the QBSA Act”) defines building work as being work over \$1100 in value. Consequently any emergency repair contract worth more than \$1100 would, under this alternative, be covered both by the QBSA Act and by the door-to-door provisions of the Act. In addition, there is a five-day cooling-off period under the *Domestic Building Contracts Act 2000* (“the Domestic Building Contracts Act”). The cooling-off period under the Domestic Building Contracts Act can be waived by a building owner, whereas a consumer cannot waive a cooling-off period under the Act.

The following table outlines the likely impacts of moving to this alternative:

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Prescribed contracts will outline their rights, and the obligations of the trader; • Identification requirement will enable consumers to identify dealers/tradespeople; • Protected by specific provisions prohibiting harassment or coercion; and • Does not hinder emergency repairs 	<ul style="list-style-type: none"> • Compliance with door-to-door provisions may deter dealers from offering emergency repairs door-to-door. If so, consumers may find they have reduced options to receive emergency repairs in future; and • Dealers may pass on increased compliance costs to consumers in the form of higher prices
Industry	<ul style="list-style-type: none"> • Lessens negative effect on industry of unscrupulous dealers who do not act ethically during emergency repairs; • Increased consumer confidence due to 	<ul style="list-style-type: none"> • Potential for increased compliance costs; • Increase in the regulatory burden; and • May discourage some dealers from offering their service, as they would have extra

⁴⁸ In addition, the Regulation has prescribed Forms 1 and 2 for such a purpose. This means that this alternative would also introduce more consistency in paperwork given to consumers.

Stakeholders	Advantages	Disadvantages
	<p>improved consumer protection;</p> <ul style="list-style-type: none"> Removes disparity between dealers who comply with the Act, and dealers in emergency repairs, who do not; and Does not prevent dealer's ability to provide their service 	administrative requirements
Government	<ul style="list-style-type: none"> Consistent with objective of the Act to have a safe market, as harassment and coercion is specifically prohibited. Also consistent with objective of an informed marketplace because contract will disclose information and dealers will have to identify themselves; and Consistent with Government Priority Outcome of safer and more supportive communities by ensuring emergency repairs can still be effected 	<ul style="list-style-type: none"> Imposes additional regulatory burden on business; There would be costs in educating the public about the change; and Costs of administering and enforcing legislation, given that it would be applicable to a wider section of the market

Results of Consultation:

In the first phase of consultation, there was support from stakeholders for regulation of door-to-door emergency repairs. Legal Aid Queensland submitted that there should be at least some regulation of dealers' activities in an emergency situation. The Queensland Retail Traders and Shopkeepers Association submitted that emergency repairs could be a cover for unscrupulous repair people. In the second phase, the Building Services Authority strongly supported the proposal to subject emergency repair contracts to some door-to-door provisions of the Act. All stakeholders agreed that the urgency of an emergency repair situation meant such repairs should not be delayed in any way.

Overall Assessment:

There is benefit in having emergency repair contracts subject to the prescribed contract, identification and anti-harassment and coercion provisions of the Act. Such provisions do not impose significant obligations on industry, but do provide consumer protection. It is an alternative consistent with the objectives of the Act and with Government Priority Outcomes, as the market will continue to be safe due to the provision of emergency repairs, but will also be fairer and more equitable.

12.3 CONCLUSIONS AND RECOMMENDATIONS

There are considerable benefits to industry in retaining the exemption provision under section 71A of the Act, while consumers are not disadvantaged because as the Act provides that there must be adequate consumer protection before the exemption can be granted. Additionally there are benefits in having door-to-door contracts for emergency repairs subject to some door-to-door provisions, as this provides consumer protection without subjecting dealers to provisions that are too onerous or might dissuade them from offering emergency repairs. It is consistent with the objectives of the Act and with Government Priority Outcomes to have the ability to apply for exemption provisions, and for emergency repair contracts to be subject to some door-to-door provisions.

Recommendation: That

- The provision in the Act allowing dealers to apply for exemptions from door-to-door provisions be retained; and***
- Contracts for emergency repairs that satisfy the requirements of a door-to-door contract, and are not regulated by the Domestic Building Contracts Act 2000, be subject to sections 61 (with the exclusion of section 61(1)(f)), 64 and 65 of the Act only***

13.0 INFORMATION STANDARDS

13.1 BACKGROUND

Section 82(1) of the Act prohibits a person from supplying goods or services for which there is an Information Standard prescribed by the Regulation, unless that person complies with that Information Standard. An Information Standard consists of information (including the form and manner of disclosure of the information) that is necessary for person buying or using those goods to know in relation to the origin, quantity, quality, nature, durability, value or use of the goods.⁴⁹

Information Standards give consumers essential information about products and services to assist the consumer in making informed decisions about purchasing that product or service, or choosing between similar products or services. Information Standards contain information that cannot be easily assessed visually, or which is information that a consumer would typically not be knowledgeable of, such as:

- the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging;
- the place and date of manufacture (country of origin) and durable life;
- the identity of manufacturer or supplier; and
- the use, care and storage of goods

Information Standards can be based upon the Australian Standards developed by Standards Australia, however this is not always the case. For example, Information Standards for shoes in Queensland are not based on Australian Standards.

Relevance to Objectives of the Act

The role of Information Standards is to inform and educate the market about products and services and their use. This helps to minimise consumer confusion and assists in consumers making informed decisions about purchases, allowing like-with-like comparisons to be made. In doing so, Information Standards are consistent with the objectives of the Act to have an informed and equitable marketplace. Additionally, the Information Standards also help to achieve the Government Priority Outcomes of safer and more supportive communities, and a better quality of life.

Other Jurisdictions

All jurisdictions administer Information Standards, mostly through Fair Trading Acts, although in the Australian Capital Territory and Tasmania there are distinct pieces of legislation that regulate Information Standards. A more detailed comparison of Information Standards across jurisdictions is included in Appendix C.

13.2 REGULATORY ALTERNATIVES

13.2.1 ALTERNATIVE 1: REPEAL

Under this alternative model, the Information Standards provisions of the Act would be repealed. Other provisions of the Act could be used to ensure that information about product quality is not misleading, namely section 40 of the Act which provides that businesses must not falsely represent that:

⁴⁹ Section 81(2) of the Act

- goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use⁵⁰;
- goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have⁵¹; and
- goods have a particular place of origin.⁵²

Impacts:

This alternative would be inconsistent with both the objectives of the Act and the Government Priority Outcomes, as it reduces the quantity and quality of the information available to consumers, making for a less informed marketplace. Section 40 of the Act only applies if the information provided is misleading. By not providing the relevant information in the first place, business could avoid scrutiny under section 40 of the Act. Information standards are a key element in addressing information asymmetries, particularly for irregular or first time buyers of products covered by such Standards.

13.2.2 ALTERNATIVE 2: VOLUNTARY CODE OF CONDUCT

Under this alternative model there would be a voluntary code of conduct providing product information disclosure to consumers. One option would be to establish a code administration body to administer the code and consider any complaints against breaches of the code. Being voluntary, the code would not be enforceable.

Impacts:

The nature of the industry is too disparate to support a voluntary code of conduct, and a voluntary code of conduct is inconsistent with the objectives of the Act and Government Priority Outcomes, as information disclosure and an informed marketplace could not be met as effectively as Standards do. It is considered that the nature of Information Standards demands a comprehensive and transparent regime, whereby consumers are left in no doubt about a product's inherent nature. Such a scenario could not be guaranteed by a voluntary code, particularly if smaller traders with limited resources are unable to voluntarily meet current Standards requirements. Accordingly it is considered this alternative does not warrant further assessment.

Results of Consultation (Overall)

In both phases of consultation there was no support for removing the Information Standards provisions. It was consistently agreed by stakeholders that such Standards were necessary for consumers, and indeed businesses.

13.3 CONCLUSIONS AND RECOMMENDATIONS

It is consistent with the objectives of the Act and with Government Priority Outcomes to retain the Information Standards provisions of the Act. There is no benefit to stakeholders in removing the provisions, as consumers would not be as informed and industry would both lose the confidence of consumers. A voluntary code would not reach all the diverse industry stakeholders and consequently would not benefit all consumers, resulting in a net public cost.

Recommendation: That the provisions of the Act requiring Information Standards to be met where prescribed be retained

⁵⁰ Section 40(a)

⁵¹ Section 40(e)

⁵² Section 40(i)

14.0 SAFETY STANDARDS

14.1 BACKGROUND

Section 84(1) of the Act prohibits a person from supplying goods or services for which there is a Safety Standard prescribed by the Regulation, unless that person firstly complies with the Safety Standard. A Safety Standard consists of requirements about the nature of a product or service that are necessary to prevent or reduce risk of injury (be it physical, mental or psychological)⁵³.

Safety Standards for services contain information on the manner in which services are to be supplied, as well as the form and manner of disclosure of warnings, instructions or other information to be communicated to a person to whom the services are to be supplied. Safety Standards for goods can prescribe a standard for the:

- performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging;
- testing of the goods during or after completion of the manufacture or processing;
- form and manner of disclosure of warnings, instructions or other information to accompany the goods or to be communicated to a person to whom the goods are to be supplied; and
- equipment and accessories supplied with the goods.

Safety Standards are an avenue of last resort and are only introduced when:

- Research reveals a high incidence of injuries (or potential injuries) associated with the product;
- Industry has failed to voluntarily provide products that comply with some other recognised Safety Standard, or the industry sector involved is not cohesive enough to make voluntary compliance work; or
- Other options for injury prevention have failed.⁵⁴

Like Information Standards, Safety Standards are often (but not always) based upon Australian Standards developed by Standards Australia. In Queensland, for example, Safety Standards for folding laundry trolleys and projectile toys are not based on an Australian Standard (both of these Standards will be examined in more detail in Section 16.0).

The importance of Safety Standards is highlighted by figures suggesting that up to 1 in 8 Australians suffer an injury each year in which a consumer product is implicated, and that the estimated direct medical cost of these injuries is estimated at in excess of \$1.3 billion per year.⁵⁵ This figure does not include intangibles such as the social cost to the community of the effects of these injuries, for example, loss of livelihood and quality of life suffered by victims of product injuries, as well as their families and carers.

Since 1996, the Office of Fair Trading has received on average approximately 138 safety complaints per annum.⁵⁶ The profile of Safety Standards generally is high in the contemporary marketplace. Government and media consistently highlight cases of significant safety risk. Safety failures of products and services are also taking on more significance as contemporary society becomes generally more litigious. Breaches of, or non-compliance with, Safety Standards by industry can form the basis of litigation while proper compliance with a Standard can be a defence for industry in such litigation.

⁵³ Section 83(2) of the Act

⁵⁴ Office of Fair Trading Product Safety Branch submission to the Issues Paper

⁵⁵ *ibid*

⁵⁶ Individual year statistics: 1996 – 135; 1997 – 166; 1998 – 157; 1999 – 144; 2000 – 104; 2001 - 121

Relevance to Objectives of the Act and Government Priority Outcomes

Product safety is a key objective of the Act. Access to safe products is an elemental consumer right and the community has an expectation that products are safe and that the marketplace is being monitored so that dangerous products are removed. Safety Standards are clearly consistent with the Government Priority Outcome of safer and more supportive communities and a better quality of life.

Other Jurisdictions

All jurisdictions administer Safety Standards through Fair Trading Acts, although in the Australian Capital Territory and Tasmania there are distinct pieces of legislation for Safety Standards. A more detailed comparison of the Safety Standards is included in Appendix C.

14.2 REGULATORY ALTERNATIVES

14.2.1 ALTERNATIVE 1: REPEAL

Under this alternative model, the provisions in the Act relating to Safety Standards would be repealed. Existing Safety Standards prescribed by the Regulation would also be repealed.

Impacts:

This alternative would not meet the objectives of the Act. Marketplace safety could not be guaranteed as products and services that did not comply with any Standards could be made available. There would be an increased risk of injury and death to consumers. Marketplace equity would also be lessened, as traders could put unsafe products on the market and avoid costs associated with safety compliance, while scrupulous traders with existing rigorous safety testing processes would still be spending money on such processes. In addition, the potential for increase in injuries would result in an increase in litigation, which would then result in an increase in costs to the community as a whole in the form of higher insurance premiums and increased demands on the judicial system. The Government Priority Outcome of safer and more supportive communities would also not be achieved under this alternative. For these reasons, this alternative not be considered further.

14.2.2 ALTERNATIVE 2: VOLUNTARY CODE OF CONDUCT

Under this alternative model, there would be a voluntary code of conduct that would attempt to be proactive in preventing injury or death as a result of unsafe goods and services. The voluntary code could be developed using existing Safety Standards provisions as a model, or overseas-based Standards could be used. One option would be to establish a code administration body to administer the code and consider any complaints against breaches of the code. Being voluntary, the code would not be enforceable.

Impacts:

A voluntary code would need to be developed then implemented as a whole-of-industry alternative, for it to be certain of meeting the objectives of the Act in the same manner as Safety Standards. This would appear problematic, as the nature of industry is diverse, with Safety Standards covering a wide breadth of products and services. The nature of industry is too disparate to support a voluntary code of conduct. Moreover, the voluntary code option is inconsistent with the objectives of the Act. The alternative relies upon traders voluntarily applying some safety standard to a product, a scenario not considered to be achievable given the disparate nature of traders (and their resources) in the marketplace. This also renders the alternative inconsistent with the Government Priority Outcome of safer communities. Consequently it is considered that this alternative does not warrant further consideration.

Results of Consultation (Overall)

As with Information Standards in the previous section, there was no support from stakeholders for repeal of Safety Standards in either phase of consultation.

14.3 CONCLUSIONS AND RECOMMENDATIONS

Deregulation or a voluntary code would not be as effective as the current mandatory standards in ensuring products are safe, particularly as they are alternatives which are not proactive in preventing safety hazards before they occur. Less prescriptive forms of Safety Standards call on the consumer to be more discerning in choosing products, and assume the consumer has knowledge of, or access to knowledge, about the inherent safety (or non-safety) aspects of a product or services. In many cases, it is unrealistic to expect consumers (or business) to be able to assess the safety of products by a purely visual inspection. For these reasons, the alternatives to Safety Standards are not consistent with the objectives of the Act, or with Government Priority Outcomes.

Recommendation: That the provision of the Act requiring Safety Standards to be met where prescribed be retained

15.0 MINISTERIAL PROHIBITION

15.1 BACKGROUND

Section 85 of the Act empowers the Minister to prohibit or restrict the supply of dangerous or undesirable goods and services, which, in the Minister's opinion, are likely to cause the death of any person or to injure the health or wellbeing of a person.

The process of prohibition begins with advice to the Minister about a product or service that is considered to be a risk of serious injury or death in the marketplace. The Minister must then give every person who is considered to have a substantial interest in the matter a written notice accompanied by a copy of the order that the Minister intends to make. Following this, seven days is given in which the Minister invites those persons to show cause as to why the order should not be made. Any submissions arising out of this process must be considered before introducing the order.

An amendment to the Act in 1996 meant that prohibition orders made after that time expire 18 months after the order is made. Seven orders have been made for prohibition since this 1996 amendment. Prohibition orders made prior to 1996 are not subject to the 18-month expiry clause. These pre-1996 orders are subject to the 10-year expiry condition applicable under section 54(1) of the *Statutory Instruments Act 1992*. After the 18-month expiry period, the order cannot be renewed or extended. Should there still be evidence of the product causing safety hazards in the marketplace, consideration can then be given to effectively banning the product through the making of a Regulation.

Currently, there are ten prohibition orders in effect. These orders are against "Konjac" mini jelly cups, coloured mothballs that resemble confectionery, flammable diesel, cot restraints, "Dynamite" alarm clock, "Weed Wizard", swimming pool alarm, "Fuelkey", "Tommee Tippee Snuggle Sak", and "Mistral" fans. Of these ten orders, two (jelly cups, and mothballs) are in force as a result of post-1996 orders. The remaining eight current orders stem from orders made pre-1996.

This relatively small figure of orders since 1996 indicates that the provision is used only as a last resort and that more consultative approaches in having unsafe products removed have, on the whole, been successful in having unsafe products removed from sale.

The origins of Ministerial Prohibition come from 1989 and the sale of so-called horror toys that depicted suffering, mutilation, violence or disfigurement or gross deformity. It was considered that such toys posed a risk of psychological injury to children. Consequently, the then Minister sought Federal support to prohibit import of this type of toy. When the Federal Government attempted to obtain a self-regulation agreement from industry on this issue without success, a clause was inserted into the Act allowing Ministerial prohibition orders.⁵⁷ In the contemporary marketplace, there is an expectation that Government will play a leading role in creating a safe environment for consumers through direct intervention, such as prohibition. This expectation is highlighted by the fact that the Queensland Government has given the need for safer communities a role as one of its Priority Outcomes.

Relevance to Objectives of the Act and Government Priority Outcomes

Ministerial Prohibition of unsafe goods meets the objective of the Act to ensure a safe marketplace. The requirement in Ministerial Prohibition for a mandatory seven-day consultation period on the proposed prohibition also meets the objective of the Act to have an informed marketplace. Ministerial Prohibition meets the Government Priority Outcome of safer communities and a better quality of life.

⁵⁷ *Hansard*, 6 September 1989, p.470

Other Jurisdictions

All States and Territories have provisions empowering Ministerial Prohibition of unsafe products and services. A detailed comparison of interstate requirements is contained in Appendix C.

15.2 REGULATORY ALTERNATIVE: REPEAL

Under this alternative model, the provisions of the Act enabling Ministerial Prohibition of unsafe products and services would be repealed.

Impacts:

It is considered that this alternative does not meet either the objectives of the Act for a safe marketplace, or the Government Priority Outcomes of safer communities and a better quality of life. The relatively small use of the Prohibition provision over recent years is indicative of industry's proactive approach to product safety, as well as the benefit of retaining Ministerial Prohibition as an effective reserve power. This alternative would put the safety of consumers at risk. Moreover, this alternative would then place the onus of ensuring safe products onto industry. While some industry stakeholders would likely unreservedly withdraw unsafe products from sale once the flaw was known, there would also be a possibility that some industry stakeholders would not. The diverse nature of industry stakeholders makes it impractical to consider the deregulated model as a viable alternative to Ministerial Prohibition.

Results of Consultation (Overall):

In both phases of consultation, there was no support for repeal of the Ministerial Prohibition powers. It was submitted consistently by stakeholders that it was appropriate for the Minister to have such a reserve power.

15.3 CONCLUSIONS AND RECOMMENDATIONS

The Ministerial Prohibition provisions of the Act best meet both the objectives of the Act, and Government Priority Outcomes. The deregulation alternative does not ensure the safety of consumers.

Recommendation: That the provision of the Act empowering the Minister to prohibit or restrict the sale of unsafe goods and services be retained

16.0 PARTICULAR STANDARDS PRESCRIBED BY THE REGULATION

16.1 BACKGROUND

When an Information or Safety Standard is prescribed under the Regulation, it is generally based upon an Australian Standard developed by Standards Australia and adopted uniformly (or substantially uniformly) in all jurisdictions. This is a consistent approach meaning that there are few barriers to industry from trading in one jurisdiction to another. However, in Queensland there are a number of mandatory Information and Safety Standards that are prescribed by the Regulation but have:

- not been adopted by other States or Territories and are particular to Queensland; and/or
- not been developed by Standards Australia but have only been adopted by Queensland and one or two other jurisdictions, and the Standard has been modified.

These Standards represent barriers to entry for traders wishing to enter the Queensland market, as they do not have to be complied with in other jurisdictions. The following table lists such Standards, and also provides a background, relevance to the objectives of the Act, relevance to Government Priority Outcomes, and comparison to other jurisdictions, for each Standard:

Standard	Background	Relevance to Objectives of the Act, and Government Priority Outcomes	Other Jurisdictions
Folding laundry trolleys	<ul style="list-style-type: none"> • Safety Standard under section 12 of the Regulation⁵⁸; • Introduced in 1987 after a child died of asphyxiation when a fully loaded trolley collapsed on the child; • Standard also designed to prevent finger entrapment if a trolley collapses; • Standard prescribes a locking mechanism to prevent collapse; and • Only one manufacturer produces trolleys in Australia with few, if any, imported folding trolleys on the market (of those that do exist, the locking device is included) 	The objective of this Standard is to prevent asphyxiation and finger entrapment if a trolley collapses, consistent with the objective of the Act to achieve a safe marketplace, and consistent with the Government Priority Outcome of safer and more supportive communities.	There is no other Safety Standard for folding laundry trolleys in any other jurisdiction.
Leather goods	<ul style="list-style-type: none"> • Information Standard under section 5 of the Regulation⁵⁹; • Designed to prevent passing off of non-genuine leather products as genuine leather; • Prescribes a number of labelling requirements; • Leather is easily imitated and non-genuine leather is difficult to distinguish to the 	The objective of this Standard is to prevent passing off and thus prevent consumers from being misled by non-genuine leather goods. As such the Standard helps to achieve the objective of the Act to ensure an informed and equitable marketplace, and, to a lesser extent, the Government Priority Outcome of safer	South Australia has an Information Standard for leather goods, but it is not the same as the Queensland Standard. Apart from this, no other jurisdictions have an Information Standard for leather goods.

⁵⁸ Section 15 of the 1989 Regulation

⁵⁹ Section 8 of the 1989 Regulation

Standard	Background	Relevance to Objectives of the Act, and Government Priority Outcomes	Other Jurisdictions
	<p>untrained eye; and</p> <ul style="list-style-type: none"> Genuine leather can be expensive, so if consumers are misled by non-genuine leather they can suffer financial detriment 	<p>communities.</p>	
Shoes	<ul style="list-style-type: none"> Information Standard under section 6 of the Regulation⁶⁰; Prescribes labelling requirements including material used in manufacture, and country of origin labelling; Prevents inferior quality shoes being passed off as higher quality footwear; and Differences between genuine and non-genuine footwear difficult for the untrained eye to detect 	<p>The objective of this Standard is to prevent consumers from being misled about the nature of footwear by informing them of the content and country of origin of the shoe through labelling. This helps to meet the objective of the Act of an informed marketplace.</p>	<p>South Australia, Tasmania and Western Australia have Safety Standards for footwear but no other jurisdictions have Information Standards for footwear.</p>
Furniture	<ul style="list-style-type: none"> Information Standard under Section 7 of the Regulation⁶¹; Requires information be stamped or labelled on the furniture, primarily country of origin labelling; Designed to give consumers a means to locate the manufacturer of furniture, and informs consumers about the materials used in manufacture; Country of origin labelling is an increasingly important issue for furniture in the contemporary market. For example, if a consumer is considering purchasing a timber piece of furniture, they may, for ethical reasons, want to know if that timber came from a managed forest area; and There is no Australian Standard for furniture 	<p>The objective of this Standard is to inform consumers about the nature of furniture they are considering purchasing by requiring disclosure of information through labelling. This is consistent with the objectives of the Act for an informed marketplace.</p>	<p>South Australia, Victoria and Western Australia have a similar (but not identical) Standard. Other jurisdictions do not have an Information Standard for furniture.</p>
Fibre content	<ul style="list-style-type: none"> Information Standard under section 4 of the Regulation⁶²; Based on an Australian 	<p>The objective of this Standard is to ensure fibre content of textiles is disclosed through labelling, and that such</p>	<p>New South Wales and South Australian have similar Standards, but, like Queensland, have adopted</p>

⁶⁰ Section 9 of the 1989 Regulation

⁶¹ Section 10 of the 1989 Regulation

⁶² Section 7 of the 1989 Regulation

Standard	Background	Relevance to Objectives of the Act, and Government Priority Outcomes	Other Jurisdictions
	<p>Standard⁶³, and requires a fibre content labelling system for textiles;</p> <ul style="list-style-type: none"> Assists consumers in choosing goods based upon the textiles they are made from, and determines how a product should be cared for; Labelling is significant particularly for consumers who have allergies to certain fibres; and Care labelling is used as a guide by dry cleaners and adherence to care labelling can be a defence for dry cleaners if a consumer takes legal action against them for products damaged in the dry cleaning process 	<p>labelling also discloses the care methodology for the textile. This helps to meet the objective of the Act to have an informed marketplace. There may be some ability for this Standard to meet the objective of a safe marketplace, if disclosure of fibre content assists in preventing allergic reactions to fibre content.</p>	<p>different versions of the Australian Standard.</p>
Projectile toys	<ul style="list-style-type: none"> Safety Standard under section 12 of the Regulation⁶⁴; Adopts an Australian Standard⁶⁵, which prescribes performance standards on the toys, reducing serious eye injuries; A projectile toy is a toy that fires a projectile (such as a toy gun, bow and arrow or crossbow). The Standard is a proactive measure to prevent serious eye injuries that can occur in relation to projectile toys; and Since the introduction of this Standard, the Office of Fair Trading has, determined that the number of serious eye injuries caused by projectile toys has been reduced 	<p>The objective of this Standard is to prevent serious eye injuries as a result of projectile toys. This is consistent with the objective of the Act to have a safe marketplace and consistent with the Government Priority Outcome of safer and more supportive communities.</p>	<p>New South Wales has also adopted an Australian Standard⁶⁶ into a regulation, but it has not adopted all of the same parts of the Standard that Queensland has adopted. Apart from this, no other jurisdictions have similar Standards.</p>

16.2 REGULATORY ALTERNATIVE: REPEAL

The following tables outline the likely impacts of moving to the alternative of repealing each of these Standards. In the case of the Safety Standards for folding laundry trolleys and projectile toys, repeal of these Standards would mean that consumers would rely upon traders voluntarily ensuring their products are of a sufficient Standard not to injure a consumer. Consumers affected by these products could

⁶³ AS/NZs 2622-1996: Textile Products – Fibre content labelling

⁶⁴ This Standard was not contained in the 1989 Regulation

⁶⁵ AS (Australian Standard) 1647-1992 – Part 2

⁶⁶ AS 1647.2-1992

undertake legal action to seek redress but this would occur after the event and would not be proactive. In the case of the Information Standards, it is possible that sections 40 (a) and (e) of the Act, relating to false and misleading representations, could be used to regulate passing-off of non-genuine leather goods and shoes, or misleading information being given about the quality and nature of furniture and fibre content:

16.2.1 FOLDING LAUNDRY TROLLEYS

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Sole Australian manufacturer, as well as imports, include the locking mechanism as a matter of course, ensuring consumer protection; and • No evidence of injuries occurring in jurisdictions which don't have the Standard 	<ul style="list-style-type: none"> • Increased risk of injury or death; and • No guarantee for consumers that new manufacturers or imported products will continue to have the locking mechanism
Industry	<ul style="list-style-type: none"> • Potential for decreased compliance costs (minor, as most/all trolleys already have the locking mechanism) 	<ul style="list-style-type: none"> • If trolleys fail because they do not have the locking device and cause injury, this would impact on consumer confidence and demand for the product
Government	<ul style="list-style-type: none"> • Minor reduction in administrative burden; and • Consistency with other jurisdictions 	<ul style="list-style-type: none"> • Potential for increased risk of injury or death – inconsistent with Act's objectives and Government Priority Outcomes; and • Minor costs of amending the Regulation and educating the public about the change

16.2.2 LEATHER GOODS

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Potential for lower prices due to lower industry compliance costs; and • Continued protection from being misled through other provisions of the Act 	<ul style="list-style-type: none"> • Increased risk of being misled by non-genuine leather goods
Industry	<ul style="list-style-type: none"> • Reduced compliance costs 	<ul style="list-style-type: none"> • Reputation of industry stakeholders may suffer if there is an increased incidence of passing-off non-genuine leather as genuine leather
Government	<ul style="list-style-type: none"> • Minor reduction in administrative burden; and • Can meet Act's objective through other provisions of the Act regarding misleading representations 	<ul style="list-style-type: none"> • Other provisions of the Act not as prescriptive as Standard – alternative may not meet Act's objectives to the same extent that the Standard does; • Does not meet the objective of the Act to have an informed marketplace; and • Minor costs of amending the Regulation and educating public about the change

16.2.3 SHOES

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Potential for lower prices due to lower industry compliance costs; and • Continued protection from being misled through other provisions of the Act 	<ul style="list-style-type: none"> • Increased risk of being misled by non-genuine shoes
Industry	<ul style="list-style-type: none"> • Reduced compliance costs 	<ul style="list-style-type: none"> • Reputation of industry stakeholders may

Stakeholders	Advantages	Disadvantages
		suffer if there is an increased incidence of passing-off non-genuine shoes as genuine
Government	<ul style="list-style-type: none"> • Minor reduction in administrative burden; and • Can meet Act's objective through other provisions of the Act regarding misleading representations 	<ul style="list-style-type: none"> • Other provisions of the Act not as prescriptive as Standard – alternative may not meet Act's objectives to the same extent that the Standard does; • Does not meet objective of the Act to have an informed marketplace; and • Minor costs of amending the Regulation and educating public about the change

16.2.4 FURNITURE

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Potential for lower prices due to lower industry compliance costs; and • Continued protection from being misled through other provisions of the Act 	<ul style="list-style-type: none"> • Increased risk of being misled about a product on issues such as material used in manufacture and country of origin
Industry	<ul style="list-style-type: none"> • Reduced compliance costs 	<ul style="list-style-type: none"> • Reputation of industry stakeholders may suffer if there is an increased incidence of furniture being misrepresented to consumers
Government	<ul style="list-style-type: none"> • Minor reduction in administrative burden; and • Can meet Act's objective through other provisions of the Act regarding misleading representations 	<ul style="list-style-type: none"> • Other provisions of the Act not as prescriptive as Standard – alternative may not meet Act's objectives to the same extent that the Standard does; • Does not meet objective of the Act to have an informed marketplace; and • Minor costs of amending the Regulation and educating public about the change

16.2.5 FIBRE CONTENT

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> • Potential for lower prices due to lower industry compliance costs 	<ul style="list-style-type: none"> • Increased risk of being misled about the nature and care of textiles; and • Increased risk of allergic reactions to fibres as consumers will not have knowledge of content of textiles
Industry	<ul style="list-style-type: none"> • Reduced compliance costs 	<ul style="list-style-type: none"> • Reputation of industry stakeholders may suffer if there is an increased incidence of textiles and their fibre content being misrepresented to consumers; and • Liability concerns for drycleaners who rely on care labelling
Government	<ul style="list-style-type: none"> • Minor reduction in administrative burden 	<ul style="list-style-type: none"> • Other provisions of the Act not as prescriptive as Standard – alternative may not meet Act's objectives to the same extent that the Standard does; • Does not meet objective of the Act to have an informed marketplace; and • Minor costs of amending the Regulation and educating public about the change

16.2.6 PROJECTILE TOYS

Stakeholders	Advantages	Disadvantages
Consumers	<ul style="list-style-type: none"> Potential for lower prices due to lower industry compliance costs 	<ul style="list-style-type: none"> Increased risk of injury or death as a result of unsafe projectile toys being made available in the marketplace
Industry	<ul style="list-style-type: none"> Reduced compliance costs 	<ul style="list-style-type: none"> Reputation of industry stakeholders may suffer if there is an increased incidence of injury caused by unsafe projectile toys; and Liability concerns for suppliers of unsafe projectile toys – increased risk of being sued if injury risk also increases
Government	<ul style="list-style-type: none"> Minor reduction in administrative burden 	<ul style="list-style-type: none"> Does not meet objective of the Act for a safe marketplace; Does not meet Government Priority Outcome of safer communities; Increased demands medical services if projectile toys injuries increase; Increased demands on legal profession if legal actions against suppliers of unsafe projectile toys increase; and Minor costs of amending the Regulation and educating the public about the change

Results of Consultation (Overall):

There was little comment on these specific Standards in either phase of consultation. The Product Safety Branch of the Office of Fair Trading submitted that the folding laundry trolley Standard could possibly be repealed as most, if not all, trolleys on the market were automatically manufactured with the locking mechanism. Of the other Standards, the Product Safety Branch submitted that they should be retained without change.

16.3 CONCLUSIONS AND RECOMMENDATIONS

For all the Standards examined in this section, it is in the public benefit to retain them as they each help to achieve the objectives of the Act, and Government Priority Outcomes, more effectively than the deregulated alternatives. In each Standard consumers are likely to be worse off in the absence of the Standard, while any minor benefit for industry is generally outweighed by the costs of deregulation.

Recommendations: That the provision in the Regulation that requires specific Standards to be met for folding laundry trolleys, leather goods, shoes, furniture, fibre content and projectile toys be retained

17.0 OTHER ISSUES

During consultation for this review, stakeholders raised the following issues that, while not issues directly flowing from restrictions under the Act, did relate to the interpretation and application of the Act:

17.1 TELEMARKETING IN RELATION TO DOOR-TO-DOOR TRADING

Both the Australian Direct Marketing Association and Legal Aid Queensland have submitted that there is marketplace confusion over the role of telemarketers within the context of door-to-door trading. Generally, telemarketing can be viewed as unsolicited offers made via the telephone⁶⁷. Submissions suggested that clarity was needed in defining which elements of telemarketing are parts of door-to-door trading and therefore subject to the door-to-door provisions of the Act.

The uncertainty created by this situation is contrary to the objectives of the Act to have an informed marketplace. In addition, telemarketing is an intrusion onto a consumer's private time similar to that found in door-to-door trading. Clarification of roles and/or regulatory options may therefore need to be considered, and could include:

- clarifying the Act for a clearer understanding of telemarketing's role in door-to-door trading; or
- amending the Act to capture more of the conduct of telemarketing under the door-to-door provisions of the Act.

Recommendation: That the Office of Fair Trading consider further the role of telemarketing within the context of the door-to-door provisions of the Act

17.2 FINANCE BROKERS IN RELATION TO DOOR-TO-DOOR TRADING

A submission from Legal Aid Queensland suggests there is marketplace concern over the role of finance brokers in relation to door-to-door trading. Legal Aid Queensland submit that finance brokers who solicit invitations from consumers to attend the consumer's residence for the purpose of arranging finance for the consumer are regulated neither by the provisions of the *Consumer Credit Code*, nor the door-to-door provisions of the Act. This is because this action is permissible under the *Consumer Credit Code*, while under the Act contracts for provision of credit are exempt from door-to-door provisions. Legal Aid Queensland suggests that some brokers argue that they provide solely credit contracts, whereas it is Legal Aid Queensland's contention that brokers are providing a service and not a credit contract solely.

Legal Aid Queensland submit that they are aware of this scenario occurring three to five times a year, and that consumers in the scenario described above are not receiving the benefit of either the door-to-door provisions of the Act or the consumer protection provisions of the *Consumer Credit Code*.

As with telemarketing, it is considered that further examination of the role of finance brokers in relation to door-to-door could assist in clarifying the Act, and therefore reducing marketplace uncertainty about the rights and obligations of consumers and traders/dealers respectively.

Recommendation: That the Office of Fair Trading consider further the role of finance brokers within the context of the door-to-door provisions of the Act

⁶⁷ Because they are transmitted by a telephone line, unsolicited fax and e-mail approaches may also be considered telemarketing.

17.3 “CALL” OR “VISIT” IN RELATION TO DOOR-TO-DOOR TRADING

In Section 11.0 of this report section 64(1) of the Act was examined. This provision requires dealers to provide identification and state the purpose of their call. It was noted in the examination of this restrictive provision that a submission had been made that the use of the word “call” in this provision (and also in section 64(2) of the Act) was misleading in that it suggested only telephone calls, when in fact a physical approach door-to-door was being referred to. The submission, by the Australian Direct Marketing Association, submitted that the term “visit” instead of “call” was more appropriate and less potentially misleading. While this is not directly a competition issue, it is considered that this issue could be examined further, given that it has the potential to cause marketplace confusion and uncertainty about the application of the door-to-door provisions of the Act.

Recommendation: That the Office of Fair Trading consider further a proposal to replace the word “call” in sections 64(1) and 64(2) of the Act with the word “visit”

17.4 GOODS AND SERVICES FOR WHICH THE “NO PAYMENT OR SUPPLY DURING COOLING-OFF” PROHIBITION MAY NOT BE APPLICABLE

As discussed in section 9 of this report, the Australian Direct Marketing Association submitted that a number of goods and services were, by their very nature, not suited to the prohibition on no payment or supply during cooling-off period. Such products and services include health and hygiene products, products made to order or clearly personalised and easily copied items such as compact discs and computer software. These products and services cannot easily be resold, if at all, if the consumer rescinds the contract. Moreover, in the case of compact discs or computer software, a dealer would miss out on revenue if a consumer used the cooling-off period to copy the disc, rescind the contract, then give that disc to others to make more copies. It is recommended that the Office of Fair Trading further examine this proposal.

Recommendation: That the Office of Fair Trading consider further a proposal have certain products and services exempt from the provision of the Act that prohibits payment or supply during the cooling-off period

17.5 CONSUMER SAFETY

This review notes that in prescribing Information and Safety Standards, the Regulation relies significantly on Australian Standards made by Standards Australia, but that other avenues, such as Standards made by the European Union and Northern American countries, may be as effective. For importers of products that are already the subject of such overseas-made Standards, having to additionally comply with an Australian/Queensland Standard may impose additional compliance costs on them. Additional compliance costs may be passed on to consumers in the form of higher prices. Therefore, it is considered that there is scope for further examination of how the Information and Safety Standards are made generally, bearing in mind the possibility of other Standards-making options.

Recommendation: That the Office of Fair Trading consider further how Information and Safety Standards generally are made

17.6 ELIGIBILITY FOR COMPENSATION UNDER THE ACT

During consultation on the Issues Paper, a submission identified potential restrictions in sections 99(3)(a) and 100(6) of the Act. These provisions are in relation to suing, through the courts, another party for specified breaches of the Act. For example, if a person is misled by another party in making a purchase, then the Act can enable the person to sue the other party for damages accordingly.

In sections 99(3)(a) and 100(6) of the Act, however, this ability to sue is restricted to persons who qualify as consumers, as defined by the Act. Sections 6(1) and (2) of the Act provide that a consumer is a person who acquires goods or services, or an interest in land, as a consumer, and that this occurs if:

- The person is an individual, and doesn't acquire the goods, services or interest for a business they are conducting as an individual or a partnership; or
- The price of goods, services or interest is \$40,000 or less.

Further, section 6(3) of the Act provides that if goods are acquired for the purposes of sale, exchange, lease, hire or hire-purchase, then the person does not acquire goods as a consumer.

There is no reference to sections 99(3)(a) and 100(6) in the second reading speeches for the Act in *Hansard*, nor does any other jurisdiction have similar provisions in their Fair Trading Acts. The equivalent sections of the Trade Practices Act do not contain the restrictions embodied in sections 99(3)(a) and 100(6). As a result, the effect of these provisions may also mean that the application of key sections 38 and 39 are not consistent with their equivalents in the Trade Practices Act. Therefore, further examination of the effect of these provisions is considered appropriate.

Recommendation: That the Office of Fair Trading give further consideration to the impact of sections 99(3)(a) and 100(6) of the Act and whether they should be retained.

18.0 RECOMMENDATIONS

In summary, the following recommendations are made:

Restrictive Provision	Recommendation
Mock Auctions	That the prohibition in the Act on the conduct of mock auctions be retained
Obscene Material in relation to unsolicited goods	That the prohibition in the Act on the use of obscene material in relation to unsolicited goods be retained
Door-to-Door Trading (General)	That the regulation of door-to-door trading through the Act be retained
Door-to-Door Trading (Prescribed Amount)	That the Act be amended to: <ul style="list-style-type: none"> • Change the prescribed amount to \$75; and • Subject the prescribed amount to a regular review
Door-to-Door Trading (Cooling-off Period)	That the current door-to-door cooling-off period in the Act be retained at ten days
Door-to-Door Trading (No Payment of Supply during cooling-off period)	That the: <ul style="list-style-type: none"> • Prohibition in the Act on dealers accepting payment or supplying goods or services during the cooling-off period for prescribed door-to-door contracts be retained; and • Office of Fair Trading further examine the proposal that certain goods and services, by their very nature, should not be subject to this provision
Door-to-Door Trading (Trading Hours)	That the restriction in the Act on door-to-door trading hours be retained
Door-to-Door Trading (Identification and Stating Purpose of Call)	That the requirement in the Act for dealers to state the purpose of their call and produce an identity card be retained
Door-to-Door Trading (Exemptions)	That <ul style="list-style-type: none"> • The provision in the Act allowing dealers to apply for exemptions from door-to-door provisions be retained; and • Contracts for emergency repairs that satisfy the requirements of a door-to-door contract, and are not regulated by the Domestic Building Contracts Act 2000, be subject to sections 61 (with the exclusion of section 61(1)(f)), 64 and 65 of the Act only
Information Standards	That the restriction in the Act requiring Information Standards to be met where prescribed be retained
Safety Standards	That the restriction in the Act requiring Safety Standards to be met where prescribed be retained
Ministerial Prohibition	That the provision in the Act that empowers the Minister to restrict or prohibit the sale of unsafe goods be retained
Particular Standards prescribed by the Regulation	That the restriction in the Regulation that requires specific Standards to be met for folding laundry trolleys, leather goods, shoes, furniture, fibre content and projectile toys be retained
Other Issues	That the Office of Fair Trading consider further: <ul style="list-style-type: none"> • the role of telemarketing and finance brokers within the context of the door-to-door provisions of the Act; • a proposal that the word “call” in sections 64(1) and 64(2) of the Act be replaced by the word “visit”; • a proposal that some goods and services, by their very nature, should not be subject to section 62 of the Act, which restricts dealers from taking payment or supplying goods during the cooling-off period; • how Information and Safety Standards generally are made under the Act; and • the impact of sections 99(3)(a) and 100(6) of the Act and whether they should be retained.

Appendix A: Provisions of the Act that mirror provisions of the Trade Practices Act

Section of the Act	Mirrored provision of the Trade Practices Act (section number)
37 – Interpretation for Division 1	51A
38 – Misleading or deceptive conduct	52
39 – Unconscionable conduct	52A
40 – False or misleading representations	53
40A – False representations and other misleading or offensive conduct in relation to land	53A
41 – Misleading conduct in relation to employment	53B
42 – Cash price to be stated in certain circumstances	53C
43 – Offering gifts and prizes	54
44 – Certain misleading conduct in relation to goods	55
45 – Certain misleading conduct in relation to services	55A
46 – Bait advertising	56
47 – Referral selling	57
48 – Accepting payment without intending or being able to supply as ordered	58
49 – Misleading representation about certain business activities	59
50 – Harassment and coercion	60
51 – Application of certain provisions to prescribed information providers	65A
52 – Assertion of right to payment for unsolicited goods or services, or for making entry in directory	64
53 – Liability of recipient of unsolicited goods	65
55B – Meaning of “trading scheme”	61
55C – Meaning of “payment to or for the benefit of” a person	
55D – Offences about pyramid selling	

Appendix B: Comparison of door-to-door regulations across jurisdictions

Jurisdiction	Legislation	Trading hours restriction	Cooling-off period	Contract and other provisions – differences from Qld
NSW	<i>Door to Door Sales Act 1967</i>	None	10 days	<ul style="list-style-type: none"> Covers a ‘credit purchase agreement’ only, not cash; Does not set a prescribed amount;
VIC	<i>Fair Trading Act 1999 – Part 4, Off-Business-Premises Sales</i>	None	5 days, with a 30 day period for rescission if dealer has not complied with requirements (s63)	<ul style="list-style-type: none"> Referred to as a ‘contact sales agreement’; Credit, contract of guarantee, and mortgage contracts are excluded; Contract provisions the same, except type size has to be at least 10 point, and the Director may approve variations if they do not cause consumer detriment – possible exemptions; and S78 – any telephone marketing must be ceased on consumer’s request, and cannot be recommenced for the next 30 days
SA	<i>Fair Trading Act 1987</i>	Weekdays: 9 – 8pm Saturday: 9 – 5pm Sundays/Public holidays: prohibited	10 days	Substantially similar provisions to Qld
WA	<i>Door to Door Trading Act 1987</i>	As above	As above	Substantially similar provisions to Qld
TAS	<i>Door to Door Trading Act 1986</i>	As above	As above	Substantially similar provisions to Qld
NT	<i>Consumer Affairs and Fair Trading Act</i>	As above	As above	Substantially similar provisions to Qld
ACT	<i>Door to Door Trading Act 1991</i>	Weekdays: 9 –8pm Saturday/Sunday/public holidays other than Good Friday, Easter Sunday, or Christmas Day: 9-5pm Good Friday, Easter Sunday or Christmas Day: prohibited	As above	Substantially similar provisions to Qld, except that it excludes contracts for supply of goods or services by a charitable organisation

Appendix C: Comparison of Information and Safety Standards regulations and Ministerial Prohibition regulations across jurisdictions

Fair Trading Act 1989 (Qld)	Trade Practices Act 1974 (Cth)	Fair Trading Act 1987 (NSW)	Fair Trading Act 1999 (Vic)	Trade Standards Act 1979 (SA)	Consumer Affairs Act 1971 and Fair Trading Act 1987 (WA)	Sale of Hazardous Goods Act 1977 (Tas)	Consumer Affairs and Fair Trading Act 1990 (NT)	Consumer Affairs Act 1973 (ACT)
Application - Supply of Goods and Services	Goods	Goods/Limited Services	Goods/Services	Goods/Services	Goods/Limited Services	Products	Goods/Services	Goods
Defines Consumer	✓	✓	X	X	✓	X	✓	✓
Purpose – to prevent or reduce the risk of injury, including physical, mental or psychological injury	A	A	A	B and C	C	A	A	C
QLD FTA DOES NOT CONTAIN PROVISION for the issue of Warning Notices	Warning Notices	Warning Notices	Warning Notices	Warning Notices	Warning Notices	NIL	NIL	NIL
Interim Banning Orders	✓	✓	✓	✓	✓	✓	✓	✓
Permanent Banning Orders	✓	✓	✓	✓	✓	✓	✓	✓
QLD FTA DOES NOT CONTAIN PROVISION for Compulsory Product Recall Orders	Product Recall	Product Recall	Product Recall	Defect Notice	Product Recall	NIL	Product Recall	Product Recall
QLD FTA DOES NOT CONTAIN PROVISION for Voluntary Product Recall	NIL	✓	✓	✓	NIL	NIL	✓	NIL
Safety Standards prescribed by regulation	✓	✓	✓	✓	✓	✓ D	✓	✓
Information Standards prescribed by regulation	✓	✓	✓	✓	✓	✓ E	✓	✓
QLD FTA DOES NOT CONTAIN PROVISION for holding conferences before making banning orders or compulsory recall orders	✓	✓	X	✓ F	X	X	X	X
Injunctions	✓	✓	✓	X	✓	X	✓	X
Undertakings	✓	✓	✓	X	X	X	X	X
Product Safety/Advisory Committees/Councils	X	✓		✓	✓	✓	✓	✓
Safety and Information Standards – Regulations	✓	✓	✓	✓	✓	✓	✓	✓

A = To prevent or reduce the risk of injury

B = To ensure that goods and services are not of such a nature as to give rise to undue risk of injury or impairment of health.

C = Prevent or reduce risk of injury or impairment of/danger to health.

D = Safety Standards only under *Flammable Clothing Act 1973* (Tas)

E = Information Standards only under *Goods (Trade Descriptions) Act 1971* (Tas)

F = Only in relation to conferences before a proposed compulsory product order/notice is made

NOTE 1: All jurisdictions have enforcement powers to make inquiries, enter premises, seize goods/records, and obtain information, documents and evidence. All jurisdictions, but for NSW, SA and Tas have provision to obtain search warrants to enter premises in certain circumstances

NOTE 2: All jurisdictions have varying provisions that relate to penalties and offences, evidentiary issues, self-incrimination and appeals/right of review.

Source: *Consumer Product Safety in Australia: A Comparative Analysis of the Statutory Regime*, March 2001 Department of Justice and Industrial Relations, Tasmania